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[*Collins v. Florida Power Corp.*](#), 91-ERA-47 and 49 (ALJ Dec. 4, 1992)

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Date: DEC 4 1992

CASE NOS.: 91-ERA-47
91-ERA-49

IN THE MATTER OF:

BONNIE R. COLLINS

and

EDWARD S. WOLLESEN,
COMPLAINANTS

v.

FLORIDA POWER CORPORATION,
RESPONDENT.

APPEARANCES:

Louis D. Putney, Esq.
For the Complainants

J. Lewis Sapp, Esq.
Sharon P. Morgan, Esq.
ELARBEE, THOMPSON & TRAPNELL

Gerald A. Williams, Esq.
FLORIDA POWER CORPORATION
For the Respondent

BEFORE: MICHAEL P. LESNIAK
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This is a proceeding brought under the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C. § 5851 and the regulations promulgated thereunder at 20 C.F.R. Part 24. These provisions protect employees against discrimination for attempting to carry out the purposes of the ERA or of the Atomic Energy Act of 1954, as amended, 42 U.S.C.A. § 2011, et seq. The Secretary of Labor is empowered to investigate and determine "whistleblower" complaints filed by employees at facilities licensed by the Nuclear Regulatory Commission ("NRC") who are discharged or otherwise discriminated against with regard to their terms and conditions of employment for taking any action relating to the fulfillment of safety or other requirements established by the NRC.

The findings and conclusions which follow are based upon a complete review of the entire record, applicable statutory provisions, regulations and pertinent precedent.¹ Having fully considered the evidence and arguments presented, I find as follows:

PROCEDURAL HISTORY AND STIPULATIONS AT TRIAL

On or about June 5, 1991, Complainants, through their attorney, filed a complaint against Florida Power Corporation with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. (CX 17). Complainants alleged that they had been subjected to illegal discrimination (discharge from employment) as a result of one or both of them having engaged in activities protected by 5210(a)(1-3) of the ERA, 42 U.S.C. § 5851(a)(1-3).

The Wage and Hour Division issued a determination that the Complainants' allegations could not be substantiated (CX 42 and 44). Complainants timely filed a request for a formal hearing on their complaints. (CX 43 and 45).

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Complainants' cases were consolidated for trial by order dated September 6, 1991. A *de novo* hearing was held in Tampa, Florida, on January 7-10, 1992, and March 16-20, 1992.

The parties stipulated at trial that Respondent is an employer subject to the ERA that Complainants both worked for Respondent, that they were terminated May 10, 1991 (TR 30), and that their complaints were filed on June 5, 1991, with the Administrator, Wage and Hour Division, U.S. Department of Labor (TR 31). The parties stipulated that Oscar

DeMiranda is an investigator for the Nuclear Regulatory Commission, Region II office in Atlanta, Georgia, which has the responsibility for supervising the operations of the Crystal River Nuclear Plant and that on May 9, 1991, the Complainant, Edward Wollesen, received a telephone call from Mr. DeMiranda in which there was a discussion (TR 878).

Preliminary Matters

The parties agreed to bifurcate the trial. This Recommended Decision and order will deal with liability only (TR 215).

Summary of the Testimony at Trial

The Complainant - Edward S. Wollesen

1. Edward Wollesen first began his employment with Florida Power in April, 1981 as a nuclear support technician. Prior to his discharge in May, 1991, he was employed by Florida Power for just over ten (10) years (TR 37).

2. From February, 1988 through and including November, 1990, Wollesen was a senior nuclear quality assurance specialist and, as such, conducted quality assurance surveillances covering different aspects of the nuclear plant (TR 40 and 41). This was similar to an audit function. He would investigate, make reports, and follow up on the resolutions (TR 41). There came a time when Wollesen was assigned to address the instrument calibration program by the nuclear maintenance superintendent, Dan Smith (TR 46).

3. Wollesen testified that in 1988, he did a surveillance that identified quite a few instruments that were not calibrated per the calibration program (TR 48). Mike Wilson wrote a non-conformance report, and Wollesen was assigned to follow-up on the non-conformance report to make certain that the problem was

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resolved (TR 49). Wollesen believed that some non-conformance reports were issued, which means several instruments remained out of calibration for quite a long period, and no determination was made to see if this impacted safety at the plant. It was determined that this was a safety issue (TR 50). Wollesen expressed his concerns about instrument calibration at the plant. He testified that you could not identify which instrument a person was referring to because the instruments could have two separate data bases, and you could not get a history on an instrument (TR 158, 153-178). Wollesen testified that about 1986, management held Wollesen accountable for the calibration program, but would not allow him to perform it (TR 182). Wollesen felt that he was reprimanded for not spending enough time on the calibration program, when actually he was told to spend only the last two hours of every day on it by his supervisors (TR 183). On June 17, 1987, Wollesen

wrote a memorandum to his supervisor at the time, Jeff Warren, entitled, "Topics of Concern and Personal Background." Wollesen expressed frustration and requested that Warren address the calibration program (CX 73, TR 178). On or about June 6, 1988, Wollesen was team leader and signed a quality program surveillance report, the subject matter being the PM-200 Instrument Calibration Program. The report states that the surveillance identified two areas of concern. The concerns were lack of attention to the program details, and lack of administration to coordinate the PM- 200 program activities (CX 74, TR 192). On July 1, 1987, Wollesen wrote his supervisor, Jeff Warren, extensively about the PM-200 program. In this memo, he told Warren the PM-200 Instrument Calibration Program was as important as welding, but it had never been 80 percent correct. Wollesen set out what he believed to be serious problems and made recommendations to correct them (CX 75, TR 243).

4. There came a time when the surveillance group, of which Wollesen was a member, merged with the audit group at St. Petersburg, Florida. Due to this realignment, Wollesen was displaced, and after November 9, 1990, Wollesen's new position was senior quality auditor (TR 52 and 53).

5. Wollesen was a senior quality auditor with Florida Power Corporation just prior to his termination on May 10, 1991 (TR 55). Approximately 20 days before Wollesen was terminated, on April 22, 1991, Wollesen received a 10-year service award, and the supervisor, Ray Yost, gave a speech and said that Wollesen was a hard worker and was doing a fine job (TR 64).

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6. On or about November 9, 1990, Wollesen attended a meeting where he was told he was a displaced person due to the merger of his section. Wollesen prepared a letter dated November 13, 1990 (CX 26), wherein Wollesen quoted provisions from the Human Resource Manual to Mr. Hickle (TR 69). Although Wollesen was offered the job of electrician, this represented a \$10,000 per year pay loss (TR 72). Also, in the position of electrician, there are no administrative responsibilities, only shop responsibilities. He would have no oversight of the problems he was trying to resolve (TR 84).

7. From on or about November 9, 1989, until November, 1990, Wollesen was given work evaluations by Victor Hernandez. Hernandez indicated that Wollesen "consistently meets standards" (TR 91 and 92). As of November, 1990, Wollesen's supervisor expressed no concerns over Wollesen's job performance.

8. As of November, 1990, Wollesen was engaged in outside business, or moonlighting. He was in car sales, advertising specialties, pool chlorinators, notary public, selling birds, and he was an independent insurance sales agent for prepaid legal services of Florida (TR 98). These outside businesses did not interfere with his duties at Florida Power, according to Wollesen (TR. 94). While employed by Florida Power, Wollesen marketed prepaid legal insurance; he was engaged in the sale of maintenance pool chlorinators; he was

involved in the sale of shoes, and marketing advertising services; he was involved in the sale of pets, that is exotic birds and dogs and horses; and he was an outside sales consultant for Crystal Chevrolet. He was also a representative for a company known as Carco. He was also involved with a company known as Showcase 90. This was another catalog company, but it never got off the ground. He was doing some preliminary work for a laser company out of Texas. He may have been involved with Amway while he was working for Florida Power, but he wasn't sure. Finally, he was involved in the Pleasure Company (TR 379-384).

9. Wollesen testified that he did not perform outside business activities during the time he was required to be working for Florida Power. Occasionally, he would handle a question while he was on a break, and he consistently put in extra hours for Florida Power (TR 95). If someone were to observe him on the telephone talking about chlorinators, they would have no way of knowing that he was on his break time (TR 121). His normal hours

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were from 8:00 a.m. to 4:30 p.m., depending on certain job activity (TR 120). He used personal disks at home with his own computer, and the disks were compatible with his work computer. He brought his personal disks into work and looked at them on his work computer when he was on a break (TR 123). Wollesen was not aware of any policy that prohibited him from doing personal for-profit business on break hours with Florida Power (TR 124). He performed no moonlighting on the Florida Power mainframe computer (TR 125 and 126). In 1986 or 1987, Wollesen became involved in the Nuclear Information Management Systems Committee, which was an off-shoot of the computer-controlled committee which was trying to allocate computer time. At the time he left the committee, sometime around 1987, the use of personal computers for private use at Florida Power was permitted. Personal computers were considered to be comparable to personal typewriters because they were taking the place of typewriters and word processors (TR 126). At the time Wollesen was fired, he had never seen a policy indicating that he could not use company computers on personal time (TR 127). There was a form (CX 12) which provided for authorization, whereby an employee could take anything home, including a personal computer, and use it for whatever purpose. The only stipulation was that if the item was needed in the plant, it had to be brought back in time so it could be used by Florida Power (TR 128).

10. Vic Hernandez, Wollesen's supervisor, was aware of Wollesen's auto sales activity as of the fall of 1990 (TR 100). Wollesen testified that he believed he mentioned to Hernandez his prepaid legal services activities, his advertising specialties and his pool chlorinator business (TR 101).

11. Wollesen observed other Florida Power employees moonlighting on the job. He saw a flier advertising an automotive friction reducing formula called SLICK 50. Some women were distributing Avon products (TR 103). He saw these SLICK 50 fliers on

bulletin boards sometime in 1990. He knows he saw the flier in the electrical shop in the nuclear plant. He saw bags going around that said Avon on them, and people were distributing them. Wollesen purchased some products through one of the individuals at Florida Power. He has seen several catalogs around the plant (TR 104). Wollesen testified that an employee named Chuck Callahan, who worked in the cubicle next to him, was using his own personal computer, and he purchased computer parts on the premises (TR 105). Another individual Wollesen recalled was advertising his real estate business by means of matches and business cards on Florida

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Power premises (TR 106).

12. Wollesen testified that he became aware that Bonnie Collins was involved in a business called the Pleasure Company in the Spring of 1991. Some time in late April, 1991, Wollesen applied to the company to become a distributor for the Pleasure Company (TR 107). Collins was his sponsor, but he would be considered an independent distributor (TR 108).

13. Wollesen explained that the Pleasure Company involved the sale of lingerie and sexual aids through catalog mail order (TR 109). Wollesen would set up a party, and someone would present the adult products at the party. Prior to his termination, he only set up one party (TR 110 & 111). He did his paperwork at home on his own computer (TR 111).

14. Wollesen admitted that he used Florida Power's E-Mail system to communicate with Bonnie Collins, wherein they talked about the Pleasure Company. Wollesen explained that part of this communication involved finding out whether certain Pleasure Company forms would transmit from WordPerfect to E-Mail and then back out again (TR 112). Wollesen said that Florida Power encouraged their employees to use the E-Mail system, an effective way to communicate with people in the corporation (TR 112).

15. Wollesen also admitted that, in the Spring of 1991, he had a brief romantic relationship with Bonnie Collins (TR 113).

16. Wollesen reviewed RX 4 and testified that it was a catalog of the products sold through the Pleasure Company (TR 149). The parties that he set up were similar to Tupperware parties. There was nothing in the catalog that he had not seen in Playboy Magazine or Spencer's Gifts (TR 151, 152).

17. Wollesen testified that it had been a longstanding policy that a person could use the Florida Power phone system as needed, so long as it did not interfere with Florida Power work. Florida Power allowed employees to reimburse the company for personal calls. Wollesen reimbursed the company for personal or business calls, and personal calls did not interfere with his duties at the plant (TR 257).

18. The day before Wollesen was fired, he had a conversation with an NRC investigator, Oscar DeMiranda. Wollesen told the

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investigator that he was working on safety issues, but that he could not discuss them because he was working them through the process (TR 213).

19. With regard to CX 29, page 3, in Wollesen's discussion with Ray Yost on May 3, 1991, the exhibit indicates that Yost told Wollesen that conducting outside business activities during normal working hours with Florida Power was unacceptable, and could result in the severest form of disciplinary action. Wollesen testified that he remembered the conversation, but did not recall Yost saying that his activities were unacceptable (TR 292). Wollesen never received a written reprimand with regard to his outside employment during 1991 (TR 292 and TR 302). If Yost had told him to stop his outside activities immediately, Wollesen testified that he would have remembered. Yost testified under oath before the Florida Department of Unemployment Compensation that he did not have personal knowledge of Wollesen doing outside business during working hours (TR 294). At no time did Florida Power give Wollesen the opportunity to correct the problems for which he was fired (TR 294). Wollesen had a clean record at Florida Power. He had never been disciplined for any reason prior to being terminated (TR 295). If Florida Power had asked him to cease his outside activities with regard to the Pleasure Company, Wollesen would have given it up (TR 295).

20. A day before Wollesen's daughter's wedding, he received a call from Ray Yost, who wanted Wollesen to come to the training center for a meeting. When Wollesen saw Yost, he told Yost that he received a telephone call from an NRC investigator concerning harassment that he had had from Florida Power previous to that time (TR 276). Shortly thereafter, John Pelham came in and asked if he could tape their conversation. Wollesen had no knowledge that this was going to be a disciplinary investigation (TR 278). Pelham's attitude was intimidating. Eventually, there came a time when Bruce Hickie came into the room and informed Wollesen that he was being terminated for violation of two corporate policies (TR 282).

21. Wollesen never underwent progressive discipline. Not only was he not verbally reprimanded, he was never reprimanded in writing, nor given disciplinary time off (see CX 65, page 5 and TR 303).

22. On May 3, 1991, Ray Yost wrote a memo to Dan Kurtz indicating that he had a discussion with Ed Wollesen concerning the

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conduct of non-FPC activities during working hours. According to the memo, Yost told Wollesen that he had observed Wollesen and he had reports that Wollesen was conducting outside business activities during normal working hours. Yost told Wollesen that this was unacceptable, and could result in the severest form of discipline (see TR 291 and 292 and CX 29, page 3).

23. The memo from Yost to Kurtz was two days after Wollesen's complaint of May 1, 1991 to Yost (TR 305 and CX 62). Wollesen complained that it appeared to him that he was given instructions, and then the person giving the instructions thereafter stated that he had no knowledge of the instructions (CX 62). The leader of the audit team was Jeff Peet (TR 308). Other auditors also were experiencing problems with Peet. Wollesen testified that the evaluation he received from Peet (CX 25) was unfair and inaccurate (TR 313).

24. On or about November 19, 1990, there was a merger of two departments, and at that time, Wollesen was working as a quality assurance specialist, along with Mr. Callahan and Mr. Stevens. All three held the same job classification. After the merger, Wollesen had a conversation with Mr. Bruce Hickie in which Hickie told Wollesen that Wollesen would be retained in the department as a quality auditor pending the occurrence of a vacancy in a regular position in that department. Wollesen was retained as a senior quality auditor until a regular position developed in April of 1991. From on or about November, 1990 until his termination, his supervisor was Ray Yost. Yost never supervised Wollesen prior to the merger of the two departments in November of 1990 (TR 348-351). After the merger, Wollesen was a senior nuclear quality assurance specialist, and his job duties were the same as those of Mr. Callahan and Mr. Stevens (TR 353). Working as a senior quality assurance auditor, Wollesen would hand in a report to the team leader during the course of an audit. There was a checklist that would be used by the team leader, who would be responsible for preparing the final audit report. If Wollesen disagreed with the team leader auditor report, he had the option of filing an exception to that report. However, Wollesen never filed an exception to any of the audit reports that were prepared in which he participated. This is true up until the time he was terminated on May 10, 1991 (TR 356 and 357).

25. Concerning the Pleasure Company, it was in April, 1991 that Wollesen agreed to become a distributor with the company. He

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had a series of discussions with Bonnie Collins about the Pleasure Company before making a decision to invest in the company, and some of these conversations took place on Florida Power company premises (TR 427). These conversations took place over a period of March and April, 1991. During this time, Wollesen had conversations with Collins about the Pleasure Company through use of Florida Power's electronic mail system (TR 428). Collins was already a distributor or representative of the Pleasure Company, and Wollesen signed up to be a distributor in April of 1991. In fact, he put on

a party during the first week of May, 1991 under his distributorship agreement with the Pleasure Company (TR 429). RX 4 is the catalog issued by the Pleasure Company to be used by distributors in marketing their products (TR 444 and 445).

26. Just before Wollesen was terminated on May 10, 1991, he had a short conversation with Ms. Collins, and she felt she was terminated because of her involvement in the Pleasure Company (TR 447).

27. On May 10, 1991, when Wollesen saw Mr. Yost, he took him aside to relate to him the conversation Wollesen had with Mr. DeMiranda of the NRC. Wollesen wanted to know if there was anything else he needed to do for Florida Power in talking with Mr. DeMiranda, and Yost told him to respond to any questions that DeMiranda had. He then went into an interview with Mr. Pelham and Mr. Yost. Pelham recorded the interview with Wollesen's permission (TR 448). During the interview with Mr. Pelham, Wollesen attempted to respond truthfully (TR 449). Wollesen admitted that Florida Power expected him to devote his full time and efforts to Florida Power business while he was on company property during working hours; he admitted that Florida Power policy would not allow him or any other employees to conduct a personal for-profit business during work time on company property; and he admitted that Florida Power would not condone the use of its assets such as its computers, fax machines and E-Mail systems to be used by any employee during work time to conduct a for-profit business (TR 458). Wollesen did not use company assets during work time for his for-profit activities (TR 475). His break time was flexible, and he did not consider either break time or lunch time to be work time (TR 476).

The Complainant - Bonnie R. Collins

28. Prior to her discharge, Collins worked for Florida Power

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for 11 years (TR 481). Her last position with Florida Power was at the Training Facility as a nuclear training clerk. Her duties changed throughout her tenure in this position. Her final duty was to maintain and keep track of all the electronic masters of the lesson plans. She had other duties: she updated manuals, signed off acknowledgement sheets and returned them to document control, did aperture cards and drawings. She filed aperture cards and requested new ones if they were lost or damaged. Aperture cards represent drawings of the plant's systems, the instrumentations and items that are in the plant (TR 483). The contents of the manuals are controlled by a numerical system through document control.

29. Collins was aware of individuals engaging in personal for-profit business at Florida Power. There was Avon, there was always a sale of some sort of t-shirt, and one lady sold burritos for years (TR 485). There was the sale of mugs, and she saw Avon at several locations. There is a woman at CR-3 that mails the Avon products to the Training Center,

and takes orders over the telephone (TR 487). The lady in question has been doing this for several years, probably 3 years or more (TR 488). This woman would use company mails to mail Avon products (TR 488). Collins felt there were so many businesses going on that there would be no repercussion for her having her own for-profit business (TR 490, 491). Collins also testified that, while working at Florida Power, you could just make a telephone call and order Tupperware (TR 503). Other items such as chicken dinners, tacos, burritos and costume jewelry could be ordered on the premises (TR 504).

30. Bill Gwaltney, a nuclear instructor at the Training Center where Collins worked, sold chicken dinners. He used the computer and the E-Mail system to send out notices that chicken dinners were available. Elaine Rubio, who worked in her department for Collins' supervisor, Terry Kamann, sold burritos. She would make them at home and bring them in along with all of the side dishes that accompanied burritos. She would call from the guard house and ask for a couple of electricians to come down to the guard house and help her carry the food. Rubio would take orders throughout the day on her phone in her office and people would stop by and pay her. Rubio was in business until about November of 1990. Their supervisor, Terry Kamann, knew about Ms. Rubio's activities because he ate her burritos. Collins was not aware of either Gwaltney or Rubio being disciplined for their private business activities (TR 504-507). Collins said Rubio was disciplined at least a dozen times for her personal use of the

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telephone. Out of an 8-hour work day, Rubio worked at least 5 hours on personal business (TR 527).

31. Terry Kamann, Collins' immediate supervisor, also had a for-profit business on the premises; he sold craft products (TR 509). Kamann's wife owns a craft shop in Ozello where they live. Periodically, Kamann would bring in crafts to the office to sell to the workers at the Training Center. Kamann would set up his display in the lobby, and Collins heard that Kamann's supervisor, Larry Kelly, asked Kamann not to do that anymore, and he thereafter sold crafts only from his office. Collins observed Kamann selling crafts from his office. Collins' office was immediately next door to Kamann's office, and she named a number of individuals who purchased items from Kamann. She also observed Rubio selling her burritos. Mrs. Kamann's gift shop is called Ozello Keys winding Trail Gift Shop. One of the type of items that is sold by the gift shop, and sold by Kamann on Florida Power premises, was a crocheted butterfly admitted into evidence as claimant's exhibit 77 (TR 509- 512).

32. Delores Stark sold silk flowers on Florida Power premises. She would take orders, and then make the arrangements or corsages or boutonnieres. Collins saw Stark work on the arrangements during work time, and then people would pick them up on Florida Power premises. Terry Kamann was her supervisor (TR 629-631).

33. On February 4, 1991, Collins purchased crocheted butterflies from Terry Kamann. She purchased 50 butterflies for \$37.04 (CX 39). Collins used the crocheted butterflies as inexpensive gifts for her Pleasure Company customers. Collins told Kamann why she was purchasing them. The purchase of the butterflies was made during work hours, at approximately 10 o'clock in the morning in Terry Kamann's office at the Florida Nuclear Power Training Center. Kamann was aware of her business, the Pleasure Company, as early as October of 1990 (TR 513-518). Kamann was aware of the nature of the products sold by the Pleasure Company because Kamann saw a catalog. According to Collins, Kamann's wife attended a Pleasure Company party put on by Kamann's daughter-in-law. Kamann did not tell Collins not to conduct this business (TR 518).

34. Collins had a business card which said "Pleasure Company Home Party Consultant." It also said "Lovely Lingerie and All

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Manner of Wonderful Things." The card had Collins' name, address and phone number on it. Kamann was aware of her business card, and she had it posted on the bulletin board in the lobby (TR 520). Larry Kelly requested that Kamann take the business card down from the bulletin board, and that Collins not put it back up. Collins was not admonished for having her business card on the bulletin board. Kamann only told her not to put it back up. This occurred about the end of October, 1990 (TR 521). The only time the nature of Collins' business was ever brought up to her was on the day that she was terminated during "the interrogation."

35. A month or two prior to being fired, just before an annual practice drill, Terry Kamann told Collins to hide a controlled manual which was out of date. Collins was very concerned at the time. She went to Kamann for guidance concerning this manual, which could possibly be used in the annual emergency drill. Kamann instructed her to hide the manual (TR 547 and 548). During the drill, inspectors from the Nuclear Regulatory Commission were on site, but the missing manual was never discovered (TR 552).

36. Collins testified that, during her break time or during lunch time, she created Pleasure Company documents at her work station using her computer. She did not have any set time for breaks during the day. Also, her lunch time varied. Collins identified RX 5 as some personal typing and some forms that she used in the Pleasure Company business (TR 563). Collins became involved in the Pleasure Company on October 1, 1990. Pleasure Company parties would be put on in the evening at someone's house. Parties were never held during work hours for Florida Power Corporation.

37. Collins attempted to identify Claimant's Exhibit 49. She said it was a xerox copy of an order form that a customer would fill out to place an order. With regard to Exhibit 49, Polly Hickle placed the order. She is Bruce Hickle's wife. The order was dated November of 1990. (Bruce Hickle participated in the decision to fire Complainant, Ed Wollesen.)²

38. Prior to Collins being told she was terminated, a tape recorded interview was conducted by John Pelham and Terry Kamann. Mr. Kelly was not in the room during the interview (TR 587). After the interview, when Mr. Kelly entered the room and asked Collins whether she understood the seriousness of her offense, Kelly cited a couple of policy numbers to her and that she had violated those

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policies. He said that due to the nature of the business, the "Pleasure Company," she was terminated (TR 590 and 591).

39. Had Florida Power asked Ms. Collins to cease her activities with regard to the Pleasure Company on May 10, 1991, Collins would have stopped, but she was not given that opportunity (TR 600). She was aware of a progressive discipline policy in place at the company, but she was not given progressive discipline.

40. Collins identified RX 4 as a catalog supplied by the Pleasure Company to customers at the end of the demonstration. Customers would look at the catalog to see if they wanted to order anything. A catalog was sent to someone using Florida Power Company Mail. Collins was aware of other employees using company mails for personal business (TR 577-579).

41. Collins testified that, as of May 10, 1991, she had been working at the Training Center for four years. Terry Kamann was her immediate supervisor, and Larry Kelly was his supervisor (TR 633). There came a time when Collins went directly to Kelly for what she perceived to be a problem with Terry Kamann. She did not believe that Kamann was correctly prioritizing work. Kelly took action with respect to Collins' complaint, and Collins was not disciplined in any way (TR 635 and 636). Yet, she was afraid to tell Larry Kelly about Kamann's instructions to her to hide the controlled manual (TR 640). She made no complaints about the manual to the NRC or the Department of Labor or any member of management (TR 640-642). The only person she complained to about hiding the controlled manual was Mr. Kamann himself (TR 643). During the time that Collins worked for Florida Power, she didn't make oral or written complaints concerning safety or quality conditions to the NRC (TR 651). Also, during the time she worked for Larry Kelly, she didn't go to Kelly for safety complaints or complaints about how the plant or training center was operated, other than the occasion she mentioned about Kamann misprioritizing work (TR 651). During the time she worked for Florida Power, she never filed a non-conformance report (TR 651, 652). Neither did she initiate any problem reports concerning safety or quality conditions (TR 652).

42. Collins identified RX 5. All of the documents that are within RX 5 deal with various aspects of the Pleasure Company, and she reproduced all of the documents from the computer's data base by printing them off on a Florida Power printer (TR 652, 653).

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Collins typed RX 5 on a Florida Power computer at the Training Center (TR 663). Collins identified RX 4 as the Pleasure Company catalog, similar to one she sent to an employee using Florida Power Company mail. On occasion, she faxed advertisements on behalf of the Pleasure Company to a newspaper in Ozello, Florida, using a Florida Power facsimile machine (TR 665). She used the Florida Power fax to run an ad to recruit people in the Ozella area for the Pleasure Company. She would use Florida Power copying machines from time to time to duplicate Pleasure Company documents with Terry Kamann's permission (TR 666). Some persons not employed by Florida Power came to the Training Center to pick up Pleasure Company products from Collins (TR 668).

43. Collins identified RX 9, pages 34 and 35, as electronic mail received by her from Wollesen on April 30, 1991 (TR 675).

44. On May 10, 1991, after she was terminated, she went home, and while she was at home, Mr. Wollesen came by. She told Wollesen that her employment with Florida Power had been terminated. She thought she told him that it was terminated because of her involvement with the Pleasure Company (TR 677). She told Wollesen that she thought he was going to be fired too, based upon the questions that were asked about the Pleasure Company. At the time of this conversation, Wollesen was still employed by Florida Power. She thought that the conversation with Wollesen took place on the back porch (TR 667, 668).

45. When Mr. Pelham conducted the exit interview with Collins, she knew it was tape recorded. She gave him permission to tape record it, although she did not like it. She responded truthfully to his questions (TR 681).

Charles Joseph Callahan

46. Callahan is Senior Quality Auditor for the Florida Power Corporation. Callahan has a long and distinguished career in the nuclear energy field (TR 722-738). Callahan worked both as a consultant for Florida Power, and also as an employee. To put it in his own words, Callahan has a great deal of start up and operational experience. He has, in the past, written procedures for start up engineers intended to meet the requirements of the NRC. Callahan first began with Florida Power under contract in August of 1988, and then the following March, he was hired as an employee to do surveillance work. Surveillance work is like an

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investigation. He would respond to a given problem (TR 736 and 737).

47. There came a time when Ed Wollesen joined his division. Callahan felt that Wollesen brought in a great deal of expertise in the instrumentation field. Instrumentation at a commercial power plant is complex, and Callahan was glad to have Wollesen there (TR 237). Callahan identified PM-200 as a program to ensure that all of the equipment was calibrated on a regular basis. In the fall of 1990, the surveillance group was combined with the audit group (TR 740). Based upon Callahan's observations prior to this merger in November of 1990, Wollesen's work was adequate. He had a learning curve to go through, but his performance was satisfactory. By the time the two groups merged, Callahan felt that Wollesen was as good as Callahan himself and another member of the team, Dale Stevens (TR 742).

48. Callahan testified that he recalled an audit in which Mr. Peet was the team leader. The subject of the audit was to investigate the environmental qualification program, nuclear operations (TR 749). This was one of the legally required audits that were conducted by the audit group to demonstrate compliance (TR 750). Callahan's observations of Wollesen were that he was competent, and that he pursued the issues, and he supported the objective of the audit. He observed the same about Dale Stevens (TR 764). In Callahan's opinion, in the audit wherein Peet was the team leader, there was nothing in Peet's evaluation which was accurate (TR 764). It was a total fabrication. Callahan testified that all three in his team, Wollesen, Stevens and himself, were frustrated because the team leader, Jeff Peet, did not allow them to evaluate the EQ program (TR 771). These events occurred in March or early April of 1991 (TR 773). In reading CX 25, Callahan testified that the derogatory aspects of CX 25, wherein Jeff Peet questioned Wollesen's ability to do audit work, were inaccurate. The portion which indicated that Wollesen had no technical knowledge in the EQ area was not accurate. In Callahan's opinion, Wollesen was the person that Callahan went to for assistance when he was doing surveillance of impel activity. Wollesen had knowledge far beyond Jeff Peet's of the EQ requirements in the instrumentation area (TR 776). Wollesen was a very dogged individual. If you sent him out to investigate a problem, he would investigate the hell out of it, and he may generate too much paper on occasion. But he was a very thorough individual, which Callahan liked. Wollesen sometimes tended to dog an issue too much, perhaps

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to some people's dislike. Callahan felt the real problem was that Wollesen overwhelmed Jeff Peet, because Peet did not understand the issues that Wollesen tried to present (TR 777). Callahan testified that he felt Mr. Peet thought that Wollesen was getting too involved in issues. Wollesen would come to Callahan and Stevens, and they told Wollesen in every case that there was validity in what he was doing (TR 779). Callahan did not know why Mr. Peet would write such falsehoods about Wollesen and himself (CX 25, TR 781). Callahan testified that the three of them, he, Wollesen and Stevens, during the time that they worked for Jeff Peet, from the latter part of March until two or three weeks into April of 1991, represented a large stone in managements' shoes. They

came along with a different attitude, a different work ethic. They criticized activities (TR 787-791).

49. Callahan was not aware of Wollesen engaging in any business activities which were to the detriment of fulfilling his duties at Florida Power (TR 796). He was relatively dedicated. He knew of occasions that Wollesen would come in at 2 o'clock in the morning to watch an activity (TR 797). Callahan was in a cubicle right next to Wollesen from 1989 until Wollesen was terminated. He did not observe Wollesen spending time doing personal for-profit business at the Crystal River location (TR 798). He felt Peet's evaluation of Wollesen was inaccurate because Peet knew his audit went down the tubes. Peet was just trying to cover an audit that went wrong and was quite ineffective; Peet knew little about what he was doing, and he was trying to convince Bruce Hickie and Ray Yost that it was not his fault, that it was the fault of Wollesen, Callahan and Stevens (TR 799).

50. Based upon his conversations with Ray Yost, it was Callahan's impression that they wished they could have avoided firing Wollesen, but apparently it was a high-level management decision, and all of them, including Ray Yost, would have rather that he was not fired. Yost gave Callahan the impression that Hickie was not predisposed to fire Wollesen (TR 807). The management that was in place in early May of 1991 when Wollesen was terminated was the same management that was in place at the time of the merger of the two sections (Audit and Surveillance) in November of 1990; Bruce Hickie was the Director, Mr. Kurtz was the Manager, and Ray Yost was the Supervisor (TR 816). If management had believed what Jeff Peet said about him in his evaluation, he would have expected to be fired (TR 818).

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Roger Dale Stevens

51. Stevens testified that he was a senior quality auditor for Florida Power Corporation (TR 821). Stevens has approximately 20 years experience in the nuclear field. A quality surveillance specialist verifies compliance with requirements, somewhat similar to what an auditor does, but in a very narrowly defined scope. When he talks of requirements, he is talking about the Code of Federal Regulations, Florida Power's licensing requirements and technical specifications (TR 823).

52. Stevens first began working with Ed Wollesen in 1980. He trained Wollesen as an I and C technician. He next worked with Ed Wollesen during his time as a senior quality assurance specialist in 1989. The department included Chuck Callahan, Wollesen and Stevens; their immediate supervisor was Victor Hernandez. The three of them were on the same level, below Hernandez. Stevens worked with Wollesen from about mid-1988 until Wollesen was dismissed (TR 824). Stevens saw Wollesen frequently during the day, considering the close proximity of their offices. Stevens never saw Wollesen conduct personal business activities while on the premises (TR 826). He, himself, does not engage

in personal for-profit business. Stevens was not aware of anyone conducting a for-profit business at the plant (TR 827).

53. After the surveillance and the audit units were merged around November of 1990, Ray Yost became the supervisor. Dan Kurtz was the manager, and Bruce Hickie was above Kurtz.

54. Stevens reviewed CX 25, Peet's evaluation of Wollesen dated May 21, 1991. A similar one was prepared for Stevens; however, he did not know of its existence until the day before his testimony. Stevens testified that this was against company policy, which dictates that the person evaluated must be aware of the evaluation and sign off on the evaluation indicating that he read and understood the evaluation (TR 830).

55. In reading Peet's evaluation of Stevens of the same date, Stevens felt there was no basis for it. It was inaccurate, incorrect, untrue, professionally damaging, slanderous and really upset him. He was upset that anyone would say those things about him and not tell him (TR 830).

56. In reviewing CX 25, Stevens disagreed with many of the derogatory comments about Wollesen (TR 832). The same was true of Peet's evaluation of Callahan, who Stevens considered an expert and

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source of guidance in doing his own work (TR 840). Based on Stevens' observations, he described Callahan as a conscientious, qualified quality assurance representative. He raised any problem that he detected during the course of an audit or surveillance. Stevens believed he was the same type of person. He has never covered up or ignored a problem (TR 841). He has never been directed to do so (TR 850).

57. In spite of the bad evaluation that he received from Peet, Bruce Hickie certified Stevens as an audit team leader around July 1991 (TR 854). Had management believed Jeff Peet's evaluation of May 21, 1991, Stevens would not have expected to have been certified. He would have expected some remedial training to get up-to-speed (TR 857).

John Pelham

58. John Pelham is a corporate security specialist at Florida Power Corporation. In his experience at Florida Power, Pelham was not aware of anyone conducting a for-profit business at Florida Power other than Mr. Wollesen and Ms. Collins (TR 859).

Terry A. Kamann

59. Kamann is a nuclear training control supervisor at the Training Center, and he has been employed by Florida Power for 3- 1/2 years. He supervises the clerical staff (TR

864, 865). Prior to May 10, 1991, the clerical staff included Bonnie Collins. Kamann and his wife are directors of a gift shop known as Ozello Keys Winding Trail Gift Shop, Inc., said shop dealing in all manner of crafts. He has sold crafts on Florida Power premises. Kamann identified CX 77 as a crocheted butterfly refrigerator magnet. He has sold like items on Florida Power premises. In fact, he sold an order of numerous crocheted butterflies to Bonnie Collins. Kamann identified CX 39 as a canceled check from Ms. Collins to him in the amount of \$37.50 for the butterflies. That transaction was negotiated and consummated on Florida Power premises. The transaction occurred on February 4, 1991, which was during a time in which he was Ms. Collins' supervisor (TR 865, 866). Kamann sold items to other Florida Power employees on Florida Power premises during company time. Collins was aware of the sales. Kamann testified that these activities were not in violation of Florida Power Company policies (TR 868). While he did use a Florida Power Xerox machine for his own personal affairs, he used his own paper,

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and he felt this was not a violation of company policy (TR 869).

60. Mr. Kelly told Kamann to remove centerpieces that he brought in and put in the lobby when the building was new and there was no decor. Kelly said that he felt it was inappropriate because there was a business card in the items with Kamann's wife's name on it (TR 870). After Kelly told Kamann to remove the centerpieces, Kamann put them on his desk, and on two occasions, sold items. Collins was aware that he was selling items from his office (TR 871).

Percy M. Beard, Jr.

61. As of May, 1991, Mr. Beard was Senior Vice President for Nuclear Operations, Florida Power Corporation, a position he held since December of 1989 (TR 884). In his position, Beard is responsible for the overall operation of the nuclear plant, including the training, engineering and maintenance (TR 886). He has two offices; he spends 60 percent of his time in St. Petersburg, Florida, and the rest at the reactor at Crystal River (TR 887).

62. Beard was informed of the activities which led to Wollesen's termination some time in late April of 1991. He was initially informed about some activities where Mr. Wollesen had been noted going to their Training Center early in the morning and had been observed carrying away quantities of material (TR 887). After an investigation, Mr. Beard learned other activities which led to Mr. Wollesen's termination. Prior to receiving information from Mr. Hickle and Mr. Kelly about Wollesen in late April of 1991, Beard had no negative information about Wollesen (TR 892). Beard was told that Wollesen had been observed coming to the Training Center at odd hours, early in the morning, and had been observed carrying away large quantities of material, which seemed strange, and that an investigation was being conducted. It was either Mr. Hickle or Mr. Kelly who gave Mr. Beard this information. He thought it was Mr. Hickle (TR 894, 895). Regarding the

large stacks of material taken from EOF, there was an oral report to Beard along the lines that there was no problem. Mr. Pelham did the investigation regarding these materials (TR 899). Mr. Kelly was involved in that he knew the results of the investigation. Mr. Wollesen's firing had nothing to do with his removal of the papers from EOF (TR 903).

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63. It was several days later that either Mr. Hickle or Mr. Kelly, or both of them, informed Beard about the scope of Mr. Wollesen's other activities that had been uncovered. Beard was shown copies of electronic mail messages between Wollesen and Ms. Collins, and Beard was shown Xerox copies of catalog material from their business that had been stored on company computer memory (TR 904). Beard relied upon the investigation conducted by Mr. Kelly, Mr. Hickle and Mr. Pelham. There was no other investigation conducted, and Beard knew of no one that wanted to get rid of Mr. Wollesen (TR 910).

64. Prior to May 10, 1991, Beard never received negative information regarding Bonnie Collins' work performance (TR 910).

65. Beard identified CX 11 as an NRC inspection report that was conducted as a result of Wollesen's complaint to the NRC, raising five issues with the NRC (TR 912). Beard testified that CX 11, page 7, under the paragraph "Results", indicates that one of the five allegations (made by Wollesen in his June 25, 1991, letter to the NRC) was substantiated and was identified as a non-cited violation, that two of the five allegations were partially substantiated, two were not substantiated and one was unresolved (TR 917). Beard explained the term "substantiated", as defined by the NRC, only meant the facts were correct, not that there was necessarily a safety violation. Beard also pointed out that he did not recall seeing the May 3, 1991 report (CX 13) prior to Wollesen's termination (TR 918). Beard was ultimately responsible for firing Wollesen. Both Mr. Hickle and Mr. Kelly recommended terminating Mr. Wollesen, and he concurred. Beard must approve terminations, so, ultimately, Beard was responsible for the termination (TR 919, 920).

66. Beard saw the evidence that was collected against Wollesen and Collins. He saw a series of electronic mail messages between the two of them discussing their business. He saw a catalog that was reproduced from the company's computer file, which was a listing of the products that they sold. He read the electronic mail. He also saw another document that had pictures of the products (TR 937, 938). He saw a Xerox copy of the catalog in evidence as RX 4 (TR 939). Beard also saw the shopping list, RX 5 (TR 940).

67. Beard was told that just before Wollesen was terminated, he wanted to see his supervisor, Mr. Yost. When Wollesen saw Yost, he told Yost that he had been contacted the day before by the NRC,

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and asked Yost what he should do. Beard was informed that Yost told Wollesen to tell the truth. This was just before Wollesen was interviewed. Hickle called Beard about the NRC contact before Wollesen was interviewed (TR 943, 944). After the Wollesen interview, Beard concurred in terminating Wollesen (TR 944). He concurred in terminating Ms. Collins and Mr. Wollesen before reviewing the interview tapes or transcript of the tapes (TR 948). Beard did not know if Hickle sat in on the interview with Wollesen. He felt the source of the information regarding the Wollesen interview came from Pelham, and he thought Yost was also present at the interview (TR 950). When he concurred with the firings, he was relying on second-hand information from Hickle -- second-hand in the sense that it wasn't Hickle who interviewed Wollesen. To Beard's knowledge, Hickle did not listen to tapes of the interview (TR 952). Wollesen and Collins did not deny that they had used company property in conducting a for-profit business, and that is why Beard concurred in firing them (TR 953).

68. Mr. Beard was unaware that on or about November of 1990, Mr. Kelly caused Ms. Collins' business card to be removed from the bulletin board. As far as Mr. Beard knew, Kelly first became aware of Collins' business, the Pleasure Company, some time late in April or the first week of May, 1991. This was the first time Kelly knew about the activities being conducted on company time with company computers (TR 959).

69. Collins and Wollesen were fired because, contrary to two Florida Power Company policies, they were engaged in a for-profit business using company assets and on company time. The nature of the business was an aggravating factor. Disclosure that company employees were engaged in that kind of business (the Pleasure Company) would reflect discredit on nuclear operations, but the nature of the business was only an aggravating factor (TR 961). Had the business been an Avon business or a jewelry selling business, they probably would have still been fired without progressive steps (TR 962).

70. Neither Mr. Hickle nor Mr. Kelly informed Mr. Beard that other company employees were conducting for-profit businesses on Florida Power premises on company time as of May 10, 1991. For example, Mr. Beard did not know about Avon products being sold on the premises (TR 963). Beard did not know that Terry Kamann brought in materials from his wife's business and sold them out of his office (TR 964). Mr. Beard was not aware of any investigations

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with regard to these other businesses. Beard believed Mr. Hickle told him that Wollesen was engaged in the Pleasure Company for about a year (TR 968). In reviewing CX 77, Mr. Beard was surprised that Terry Kamann sold an item similar to CX 77 at the Training Center (TR 970).

71. There are some circumstances when personal computers and fax machines can be used by Florida Power employees, but not on company time, and not for a personal for-

profit business (TR 976). The only company asset Wollesen and Collins used improperly was the computer (TR 980).

72. Mr. Beard testified that the nature of the Collins/Wollesen business was one that could bring discredit to the company if disclosed to the public, but he believed that had they been conducting an Avon business, he still would have fired Collins and Wollesen without warning them (TR 986). During Mr. Beard's tenure at Florida Power, he could recall only one other person being terminated without going through progressive steps. This person was discharged for violation of company policy for buying an appliance on credit (TR 988). Beard was not aware of anyone else who was terminated for engaging in an outside for-profit business with company assets (TR 989). The philosophy of progressive discipline is part of company policy, but progressive discipline is not mandatory (TR 1007). If it is a serious offense, the management is not restricted to progressive discipline (TR 1008).

73. Beard testified that prior to May 10, 1991, there were numerous ways that an employee at Crystal River Unit 3 could have reported a nuclear safety concern. As to his personal philosophy, he felt that there was no reason not to surface all problems. Beard stressed the identification of problems (TR 1018-1020). It is Beard's understanding that, in comparison to other plants in the United States, Crystal River submits more reports than the average. Crystal River's threshold for reporting is lower than others (TR 1024).

74. At the time of the merger of the audit and surveillance groups in late 1990, Beard was aware that Mr. Wollesen's position was one of two positions to be abolished. Wollesen was transferred to a position in the audit section because he had some abilities that could be used (TR 1027, 1028).

75. At the time Wollesen was discharged, Beard knew of

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absolutely no nuclear safety, security or health issues which Wollesen had raised which were unresolved. He was not discharged for ever making a report of a nuclear safety, security or health nature (TR 1034). Other than Mr. Wollesen, all of the auditing members are still employed by Florida Power (TR 1036). At the time Beard approved terminating Mr. Wollesen and Ms. Collins, none of the items raised by Mr. Wollesen were safety or security concerns at Crystal River Unit 3, as far as Beard was concerned (1044).

76. When Beard discussed a position for Mr. Wollesen with Mr. Hickie in the fall of 1990, he heard no derogatory comments about Mr. Wollesen. Mr. Hickie recommended that Wollesen be retained in the Company, and Wollesen was subsequently assigned to the audit section. Mr. Beard concurred because he left those decisions to his directors and supervisors. He heard no derogatory comments about Wollesen; he did not hear that

Wollesen had a history of making internal complaints, nor did he hear that Wollesen had an ongoing for-profit business (TR 1063, 1064).

77. The first time Mr. Beard heard of Ms. Collins was about a week prior to her termination. Beard heard her name from Mr. Kelly, and it was in connection with operating the Pleasure Company (TR 1064, 1065).

Bruce James Hickle

78. Mr. Hickle testified that he has been married to Polly Ann Hickle since August of 1974. Mrs. Hickle is employed by the Citrus County School system as a speech pathologist, and she has been employed by the Board of Education for about 9-1/2 years (TR 1088 and 1089). Mr. Hickle has been employed by Florida Power Corporation since December, 1982. His present position is Director of Quality Programs. Since graduation from college, all of Mr. Hickle's experience has been in the nuclear power industry. He is a graduate of the University of Wisconsin, and has a Master of science and Engineering Degree from Catholic University in Washington, D.C. (TR 1094).

79. During the time that Hickle was Operations Manager at Crystal River 3, his responsibilities included implementation of quality assurance programs (TR 1097). Shortly after he became Quality Programs Director, the Quality Programs Department underwent reorganization, which affected the area in which Mr. Wollesen was working. There was consideration at Pat Beard's level

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which programs would be evaluated in order to streamline the organization. It became Hickle's responsibility to evaluate the Quality Programs Department and make recommendations for change.

80. Hickle was involved in the merger of the Audit and Surveillance sections sometime in the fall of 1990. Hickle recommended the merger (TR 1098). One of his motives was to take two independent verification functions and put them together under one supervisor, which would increase the organizational efficiency. Also, he could take surveillance people and train them as lead quality auditors so they could head up audit teams.

81. The reorganization resulted in the elimination of a supervisory position in the Quality Surveillance Group occupied by Vic Hernandez (TR 1101). As a result of Hernandez' interest in the quality systems area, he was assigned there full time, and, by rolling Vic Hernandez into an auditor function, it left one position displaced, a position which was no longer needed in the quality program section. The displaced person turned out to be Ed Wollesen. He had the least experience in the quality surveillance group, and, based on that, Hickle made the decision that Wollesen's position would be displaced (TR 1103).

82. Hickle met with Wollesen, and they talked about what it meant to be displaced. It didn't mean that he was without a job, it meant that another position commensurate with his background experience would have to be found, and that Hickle and the rest of the organization would help find him another position. At that time, there was nothing available except an electrician's position. Wollesen was not interested in the electrician's position (TR 1103). It would have resulted in a substantial reduction in pay, and he would have had to work overtime to make up the difference (TR 1235, 1236).

83. The next day, Wollesen gave Hickle a long memo, and Hickle could tell after reading the memo that Wollesen was upset. Hickle told him that he would try to find a position for him in the quality programs department, but that it couldn't be guaranteed. Then Hickle went to his supervisor, Mr. Beard, who assured Hickle that there was no urgency in reassigning the position. With that, the situation remained status quo until a job opened up for Wollesen (TR 1104). Hickle identified CX 26 as the long memo Wollesen wrote. It was not Wollesen's reference to the policy manual which caused him to see Beard. Hickle just felt that

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Wollenson needed some additional assurances that his job was not in jeopardy (TR 1106, 1107). As soon as a position developed in Hickle's department, Wollesen was notified that he was no longer displaced -- that he had a permanent position. The vacancy was not advertised, because part of the strategy in the reorganization was to move Wollesen into that position (TR 1108).

84. Wollesen was employed in Hickle's department until his termination (TR 1109). During that time, there were no conflicts or disagreements. Wollesen never brought safety issues or concerns to Hickle's attention. Hickle was not aware of complaints of violation of NRC regulations, info, guidelines or plant regulations made by Wollesen (TR 1120). Hickle reviewed CX 53, a memo Wollesen wrote on July 16, 1987 entitled "Burnout", and testified that he did not see CX 53 prior to recommending that Wollesen be terminated (TR 1121). Hickle had no involvement with Mr. Wollesen concerning the subject matter of CX 53. Prior to recommending Wollesen's termination, Hickle had no knowledge that Mr. Wollesen had been referred for psychological evaluation in 1987, or that Wollesen had been instructed by Mr. Lander not to make complaints to any person other than through the chain of command (TR 1122). Mr. Lander never worked for Mr. Hickle. Mr. Hickle did not consult with Joe Lander in arriving at the decision to recommend Wollesen's termination, nor did he consult with Jeffrey Warren, Harry Goldsmith, Mr. Cunningham, Dan Smith or Roger Murgatroyd concerning his recommendation to terminate Wollesen (TR 1123-1124).

85. There was testimony by Ed Wollesen of an incident in which he and Dale Stevens approached Hickle during an outage when Hickle served as shift manager. The issue was whether the technical specifications required a monitor to be operable during the start-up phase of the reactor system. Hickle didn't know the answer to the question, so he called

the shift supervisor, since he was the one who held the current operating license, and since it was the shift supervisor's call. The shift supervisor told him that the monitor was not required for that part of the start-up. Hickle passed the information on to Wollesen and Stevens, but neither one of them accepted the answer. Hickle didn't have time to talk because his shift ended. Hickle told them that if they were not satisfied, they should document their concerns in their surveillance report. No threats were made at any time (TR 1125- 1127). This incident had nothing to do with his recommendation to Mr. Beard to terminate Mr. Wollesen (TR 1128).

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86. The first time Hickle became aware of the Pleasure Company was when he was called to John Pelham's office on May 9, 1991 (TR 1136). Prior to that, Hickle had no knowledge about its existence. In the fall of 1990, Mr. Hickle's wife, Polly Hickle, told him that a friend of hers, Judy Fowler, asked her if she wanted to go to a lingerie party. Hickle was never sure who was hosting the party. Mrs. Hickle went to the party, and when she returned, she said that she had a good time (TR 1137). Polly Hickle did not say whether she purchased any products.

87. As of the date of the trial, Mr. Hickle had not seen items purchased by Polly Hickle. The name Bonnie Collins never came up in conversations with Polly Hickle. Prior to May 9, 1991, Mr. Hickle did not know that Bonnie Collins or Edward Wollesen were connected to the Pleasure Company. Mr. Hickle knows Judy Fowler (TR 1138). She worked for Florida Power in the Radiation Detection Department. Hickle never had discussions with Ms. Fowler concerning the Pleasure Company. Hickle never had discussions with anyone concerning the party his wife attended in the fall of 1990. Prior to the preparation for the hearing in this case, Mr. Hickle had never seen the order form for products purchased by Polly Hickle through Ms. Collins of the Pleasure Company (TR 1139).

88. The first time Hickle and Larry Kelly had a discussion about the Pleasure Company was when they were called to John Pelham's office on May 9, 1991. Larry Kelly is the Director of Florida Power Training Department (TR 1139). Prior to May 9, 1991, Mr. Hickle and Mr. Kelly never had conversations about the Pleasure Company.

89. In mid-April of 1991, Mr. Hickle became aware that Ed Wollesen had been seen at the Emergency Operations Facility early in the mornings, and was removing material. Either Dan Kurtz or Ray Yost told Hickle that they had reports via somebody in training. Someone in training told them that Wollesen was spending a lot of time there early in the morning. He was seen taking out large stacks of material. Hickle knew that Wollesen was not there for an audit. As far as he was concerned, Wollesen had no reason to be there. Hickle asked Ray Yost to talk to Wollesen and tell him whatever Wollesen was doing there, if it wasn't audit business, Hickle would rather he not be there (TR 1140). Hickle was concerned that people in the Training Department would think that an undercover

audit was being conducted. Hickle told Larry Kelly at one of their staff meetings that Wollesen was spending time in

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the Training Center in the early mornings. Hickle told Kelly that Wollesen was asked to stop going there. Hickle believed this conversation took place about the last two weeks in April (TR 1141).

90. On May 3, 1991, Hickle talked with Ray Yost after a counseling session with Wollesen. Yost told Hickle that he talked to Wollesen because Yost had reports that Wollesen was involved with conducting outside businesses when he should have been doing audits and audit work (TR 1144, 1275). Wollesen told Yost that the extent of his outside business activities was limited to receiving calls on occasion when he was at his desk, and that he had told people to call him after hours. Yost said he told Wollesen that continuation would result in the severest disciplinary action. The next time Hickle had any report that Wollesen was engaged in a for-profit business during work time for Florida Power was when he was called to John Pelham's office on May 9, 1991 (TR 1145).

91. When Hickle went to Pelham's office, Larry Kelly was present. Pelham completed his investigation of Bonnie Collins. As a result of the investigation, Mr. Wollesen was implicated in the Pleasure Company (TR 1147). Hickle received a verbal briefing. Hickle was told by Pelham that Wollesen and Collins were involved in the Pleasure Company, and that they were communicating their business activities using Florida Power E-Mail. Pelham collected information for Hickle to see. There was a form that was produced on a company computer. Pelham also gave Hickle a copy of a Pleasure Company Catalog. It had products of the company displayed. Hickle reviewed all of the E-Mail messages, and, based upon Hickle's review, some of them concerned the Pleasure Company. The messages involved products or upcoming events (TR 1149).

92. Mr. Hickle identified RX-9 as being the E-Mail of Wollesen/Collins messages. In making his recommendation for the discharge of Mr. Wollesen, Hickle did not consider the messages which were of a purely personal nature. He considered only those messages that contained business-related information concerning the Pleasure Company (TR 1151).³

93. In reviewing RX-9A, Mr. Hickle testified that he had possession of the messages contained therein prior to terminating Mr. Wollesen. He identified the exhibit as an important basis for his decision to recommend the termination of Wollesen. He received the documents from Mr. Pelham on May 9, 1991 (TR 1159).

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Mr. Hickle testified that he relied only upon the for-profit business messages included in RX-9A in his decision to terminate Mr. Wollesen. Hickle reviewed in open court these business messages (TR 1161-1166).

94. Hickle identified RX-4A as what Pelham showed him to be a copy of the Pleasure Company catalog. He saw RX-4A on May 9, 1991, and he relied, in part, on the catalog in his decision to recommend termination. Hickle felt that the nature of the business was one that some Florida Power employees could find offensive, because it dealt with materials that were sexually related. Hickle said that some Florida Power employees could perceive that they were in a hostile environment if they were exposed to the catalog (TR 1168). Hickle also saw a printout of Bonnie Collins' disk on May 9, 1991 (RX 5). This exhibit gave Hickle a better understanding of the nature of the business, but he did not rely upon RX 5 in his decision to terminate Mr. Wollesen (TR 1170).

95. Immediately after the meeting with Kelly and Pelham on May 8, 1991, Hickle contacted Wollesen's immediate supervisor, Ray Yost (TR 1171). Hickle told Yost to see John Pelham, so Yost could get the information first hand (TR 1172). Hickle also notified Mr. Beard, and briefed him on the telephone as to the meeting with Pelham.

96. Late in the afternoon of May 9, 1991, Hickle met with Larry Kelly, and they went to see Jim DeLonzo, who was manager of Florida Power Human Resources (TR 1173). Kelly and Hickle explained to DeLonzo what information they had, and asked for his opinion. They wanted to make sure that their actions were consistent with company policies and past practices. In discharging Mr. Wollesen, Hickle relied on information provided by Mr. DeLonzo. DeLonzo thought that if the circumstances proved to be correct (concerning the Pleasure company business on Florida Power premises), it was a dischargeable offense (TR 1174). Just to be sure, DeLonzo called the Vice President in Charge of Human Resources, George Rickas, and after that conversation, DeLonzo did not change his mind. The input Hickle received was that the circumstances constituted a dismissable offense based upon two violations of company policies: conflict of interest, and use of company micro-computers (TR 1175).

97. Hickle reviewed and relied upon RX-7 and RX-8 prior to recommending that Wollesen be terminated. They are entitled

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"Conflict of Interest" (Company Policy Number 1), and "Security" (Company Policy Number 5), respectively (TR 1176, 1178).

98. Hickle said that after Yost met with Pelham, Yost felt that disciplinary action was warranted. They determined they would schedule an interview with Wollesen to see if there were extenuating circumstances. Pelham and Yost would be involved in the interview. Hickle didn't want the interview to be compromised, therefore, it would be close in time to the Bonnie Collins interview (TR 1181).

99. Concerning Wollesen's exit interview, the only instructions Hickle gave Pelham were to ask Wollesen if he had open safety issues. Hickle was not present during Wollesen's interview (TR 1182). After the interview, Hickle talked to Ray Yost at length. Hickle relied on what Yost told him in terminating Wollesen. Yost said that Wollesen admitted he was involved in the Pleasure Company and several other businesses. As Hickle recalled, Wollesen was not specifically asked about the E-Mail transmittals (TR 1184). Based upon Hickle's conversations with Yost, Hickle's belief was that Wollesen did not have open safety issues.

100. Yost told Hickle that, prior to the interview, Wollesen called Yost aside and asked to talk with him privately. Wollesen told Yost that he had been contacted the day before by someone from the NRC (TR 1186). Yost told him to answer questions from the NRC honestly.

101. Hickle then talked to Mr. Beard. Hickle communicated the results of the interview to Mr. Beard by telephone, and sought his concurrence in dismissing Mr. Wollesen; Beard gave his concurrence. Wollesen was fired for violating company policies; specifically, the conflict of interest and security policies (TR 1187).

102. RX-25A, Hickle's letter to Mr. Beard, accurately outlines the reasons for discharging Mr. Wollesen (TR 1189). At the time of Wollesen's termination, Hickle had no open complaints, problem reports or allegations of safety or health concerns from Mr. Wollesen (TR 1189 and 1190).

103. As of May 10, 1991, Mr. Hickle had no knowledge of other Florida Power employees or supervisors at Crystal River 2 engaging in personal for-profit business on company time on company property. He had no knowledge of Marge Gufford conducting the sale

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of Avon products. He had no knowledge of Terry Kamann engaging in the sale of craft products (TR 1197).

104. In making the decision to discharge Wollesen, Hickle considered the company policy which dealt with progressive discipline. Hickle said that progressive discipline was intended for minor, less serious offenses. In this case, he didn't view the situation as being a minor offense. Wollesen had been counseled on May 3rd by his supervisor (TR 1200). Hickle felt that Wollesen was not straightforward with his supervisor regarding the nature and extent of his outside business activities on company time, and, therefore, he did not feel that it was a minor offense. Hickle felt Wollesen's job performance was deteriorating based on information received from Mr. Yost and Mr. Kurtz, Wollesen's immediate supervisor and general supervisor (TR 1203).

105. In reviewing RX-25, an assessment of Ed Wollesen by Mr. Peet, Hickle did not rely on the written assessment in making his decision to terminate Mr. Wollesen (TR 1215).

106. There was no evidence that Mr. Wollesen ever did anything to promote business activities after May 3rd (TR 1284). So, Wollesen was not fired for violating Yost's warning (TR 1144 and 1284).

107. Mr. Hickle reviewed the Pleasure Company catalog, and compared it to CX 49. Hickle stated he never saw the items listed on CX 49 at home. Hickle never asked his wife if she purchased anything from the Pleasure Company (TR 1296).

108. Yost's conversations with Hickle concerning Yost counseling Wollesen took place on or about May 3, 1991. Wollesen wrote a memo (CX 62) dated May 1, wherein Wollesen complained about certain organizational problems which he had observed in the Audit Department (TR 1296, 1297). Hickle was unaware of Wollesen's memo prior to recommending that Wollesen be terminated (TR 1298). However, Mr. Hickle saw the three memos at CX 29, and they were part of the reason to terminate Mr. Wollesen. Therefore, he must have received all three memos concerning warnings from Yost to Wollesen before May 10, 1991 (TR 1299-1301).

109. Mr. Hickle had no information to indicate that Mr. Wollesen did anything improper in removing materials from EOF, the Training Center (TR 1303). Concerning Mr. Yost's second memo at CX

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29, Mr. Wollesen did nothing to violate this admonishment.

110. Hickle was not aware that Wollesen had an IBM computer at home to create documents, compatible with the company computer, when he recommended that Wollesen be fired. He learned of this after Mr. Wollesen's dismissal (TR 1320). Nothing in CX 9A reflects activity involving Mr. Wollesen after the warning of May 3, 1991 (TR 1321).

111. With regard to the Pleasure Company catalog, Mr. Hickle does not personally find the contents objectionable (TR 1322).

112. Even though Mr. DeLonzo said that Wollesen's activities were a dischargeable offense, it did not mean that it was mandatory that Wollesen be fired. Firing Wollesen was Hickle's decision. After Hickle conferred with Ray Yost, asked Yost for his recommendation, and Yost said it would be to discharge Mr. Wollesen, Hickle wanted to discharge Mr. Wollesen (TR 1323, 1324). Hickle's decision was influenced by Mr. Yost (TR 1325). Hickle was aware of Florida Power employees being discharged without

warning. One case involved an employee's criminal conduct off Florida Power premises (TR 1329).

113. Wollesen violated a Florida Power rule on use of their computers. With regard RX 8, item number 7 on page 5, the second paragraph states, "Florida Power microcomputers may be used for limited non-business usage if certain conditions are met. Usage must be after normal business hours, only for non-profit making situations and the employee's non-business related files or programs must be maintained on personally owned diskettes" (TR 1329, 1330).

114. While Hickle has not observed Avon or Slick 50 products being sold on Florida Power premises, he has seen Girl Scout cookies offered for sale. He did not conduct an investigation. The sale of Girl Scout cookies was not a for-profit business (TR 1333, 1134).

115. After Wollesen's exit interview, Hickle called Beard and told him that Wollesen had informed Yost of an NRC contact (TR 1339, 1340). Hickle was not certain whether he informed Mr. Beard that there was no new information from Ray Yost, concerning Wollesen engaging an additional outside business after the May 3, 1991 warning (TR 1340, 1341).

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116. Hickle said that the nature of the products sold by Mr. Wollesen was not the determining factor in Wollesen's termination. Had Mr. Wollesen's business been a Tupperware business, Hickle did not know what he would have recommended, because the circumstances would have been different. The product line did have a bearing on Mr. Hickle's thinking, but it wasn't the reason he dismissed Mr. Wollesen. The nature of the business had something to do with why Hickle recommended terminating Mr. Wollesen (TR 1349, 1350).

117. In response to the question, "what did Mr. Wollesen do after May 3, 1991 to be fired?" Mr. Hickle said that Wollesen was not straightforward with his supervisor. Wollesen told his supervisor on May 3, 1991 that the only activity in which he was engaged was an occasional phone call when somebody called him. In fact, that was not the case (TR 1353, 1354).

118. Before recommending that Mr. Wollesen be terminated, Hickle did not look at Wollesen's personnel file (TR 1361).

119. CX 49 shows that the bill was paid by Master Card. The Master Card statement is sent to Mr. Hickle's home, but his wife pays the bill (TR 1366).

120. As of May 3, 1991, Mr. Hickle was aware that Wollesen was conducting for-profit businesses on Florida Power premises. According to Mr. Hickle's information from Ray

Yost, this involved the sale of pets, horses, birds and shoes. He had no knowledge of the Pleasure Company, or of a business involving the type of products sold by the Pleasure Company. On May 3, 1991, Mr. Yost was to talk to Wollesen about these for-profit businesses, and to tell him to knock it off; simply, to get Wollesen's commitment to do that (TR 1367-1369). Technically, it may have been a dischargeable offense as of May 3, 1991, i.e., the horses, the shoes and the bird business, but Hickle did not have hard evidence. He couldn't quantify the amount of time Wollesen was spending with these businesses. On May 3, 1991, Mr. Yost counseled Mr. Wollesen, and Wollesen confirmed that he was doing the bird, shoe and horse businesses. However, Wollesen only admitted receiving an occasional call. He also admitted to a pool chlorinator business (TR 1371).

121. On May 9, 1991, Mr. Hickle was confronted with a different situation. For the first time, he had information from what he considered to be a very reliable investigation. This was

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the E-Mail, along with various forms and the Pleasure Company catalog. He had what he considered "soft" information on the birds, shoes, chlorinators, etc., and now he had "hard" information on the Pleasure Company (TR 1372, 1373). He felt he had to deal with the Pleasure Company situation, because it wasn't the kind of conduct he wanted in the work place. He felt the nature of the Pleasure Company business was an aggravating circumstance, the type of situation where a woman, in particular, or perhaps a man, could perceive themselves to be in a hostile work place (TR 1373). The first time Hickle conveyed to Mr. Beard that Wollesen was conducting an outside for-profit business was May 9, 1991.

122. When Hickle found out about Wollesen's businesses such as horses, shoes, chlorinators and birds on May 3, 1991, he didn't ask Mr. Pelham to conduct an investigation, for example, to look into Wollesen's E-Mail about birds and horses (TR 1374). Had Hickle had the same type of evidence that he had with the Pleasure Company, Hickle would have recommended firing Wollesen. Mr. Hickle said that there was some sensitivity on his part to the nature of the Pleasure Company business, but that it wasn't a factor (TR 1375).

Ray Yost

123. Ray Yost testified that he has been employed by Florida Power Corporation since 1980 in the Quality Program Department (TR 1382). Yost became supervisor of Quality Audits in March of 1987, and formally reported to Dan Kurtz. Yost served as Ed Wollesen's supervisor from November, 1990 to May of 1991 (TR 1383, 1384).

124. In the fall of 1990, there was a reorganization within the Quality Programs Department, and Mr. Yost assumed a new function which had formerly been the surveillance function (TR 1386). He picked up four individuals who were team members:

Victor Hernandez, Ed Wollesen, Dale Stevens and Chuck Callahan. Initially, he was overstaffed as a result of the merger of the Surveillance Group into the Audit Group, and he recommended that the person who occupied the overstaffed position, Ed Wollesen, be allowed to remain as long as possible in anticipation of an impending vacancy (TR 1387). Management, Dan Kurtz and Bruce Hickie, attempted to hold on to Wollesen as long as possible. Yost told Wollesen in the fall of 1990 that they would try to hold on to him until a position became available in the section. The situation was resolved when an employee found another position and created a vacancy into which Mr. Wollesen was placed. This

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occurred about April of 1991 (TR 1388).

125. Yost identified CX 25 as a memo to him from Jeffrey D. Peet dated May 21, 1991, regarding Peet's assessment of Ed Wollesen's performance during an environmental qualification audit. Peet was the team leader (TR 1393). Yost had been receiving these types of reports since about 1987. They were written on candidates for team leader certification. Yost reads the reports and tries to analyze what additional training the candidate requires (TR 1394). The reports are not placed in an employee's personnel file (TR 1395, 1396). Yost makes recommendations to the manager, and ultimately the manager certifies the individual. Yost received reports on Mr. Stevens and Mr. Callahan, and, ultimately, Yost recommended that they be certified (TR 1397).

126. Yost identified CX 29, a three page document regarding the meeting with Wollesen on or about April 29, 1991. Yost had received reports from Jeff Peet that Wollesen was supposed to be at a certain location and that Wollesen had not reported there, and after checking with Steve Chernenko, Chernenko told Yost essentially the same thing. Peet said that Wollesen was supposed to be on-site to perform some audit activities when he was observed in the general office complex (TR 1403, 1404). Also, he received information from Bernie Komara that Wollesen was seen at the Training Center early in the morning or during off hours receiving documentation and carrying documentation away from Training (TR 1405). Some time later, Yost's manager, Dan Kurtz, brought the same information to his attention. Yost met with Wollesen to find out why he was at the Training Center, and to let him know that while he was at the Training Center, it would be perceived he was carrying out audit activities. Yost instructed Wollesen not to go to training unless he had some stated business there either as an audit function, surveillance function or personal training (TR 1406, 1407).

127. Referring to page 3 of CX 29, Yost prepared another memo dated May 3, 1991. Yost received information from various team leaders, and more specifically from Bruce Hickie, that Wollesen had been observed conducting what appeared to be non-audit related activities, and Yost was asked specifically by Hickie to talk to Wollesen and get an understanding of what Wollesen was doing, and if it was non-Florida Power Corporation business, that Wollesen was to cease those activities. For example, Jeffrey Peet complained to Yost that Wollesen had been using the fax machine for non-Florida

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Power business. Wollesen more or less concealed the information coming over the, fax machine. Also, Bruce Hickle overheard a conversation wherein Wollesen was in a discussion with non-Florida Power personnel, for what reason he didn't know (TR 1409-1411).

128. As of May 3, 1991, Mr. Yost did not have specific information regarding Mr. Wollesen being engaged in outside business activities, with the exception that he knew Wollesen was involved in the sale of shoes (TR 1413). In reviewing the brochures for the Pleasure Company, RX 4 and 4A, Yost had not seen the brochures until May 10, 1991. Yost had no information on or about May 3, 1991, that Wollesen was involved in the Pleasure Company (TR 1414).

129. On May 3, 1991, Wollesen told Yost that he was not actively marketing products on Florida Power premises, but certain people had purchased pool chlorinators and he had tried to respond to their questions. He tried to minimize his involvement. Yost told him that, regardless of his level of activity, engagement in the activity was prohibited by company policy, and that if it continued, it would have the severest of consequences on his employment with Florida Power. Wollesen said that he understood (TR 1418).

130. Sometime after his meeting with Wollesen, Yost told Bruce Hickle what Wollesen had said (TR 1419). Yost had another meeting with Wollesen between May 3 and May 10, 1991, but he was not sure of the date (TR 1419). The meeting was in reference to a manpower request to provide support for Mr. Rossfeld. Based on several criteria, Dan Kurtz and Yost felt that Wollesen was the best person for the job, but they did not want to assign it to Wollesen without his consent. So, Yost personally called, and there was a meeting between Kurtz, Wollesen and himself. Wollesen had a favorable response. He had no reservations about taking the assignment (TR 1421). Wollesen was to begin his assignment in the compliance section between May 3 and May 5, 1991.

131. The next date Yost participated in the management process regarding Mr. Wollesen was May 10, 1991. Yost had an initial meeting with Bruce Hickle in Hickle's office, and he learned from Hickle that John Pelham was involved in an investigation, and Yost was asked to meet with Pelham (TR 1422, 1423). On the morning of May 10, 1991, in the meeting with Mr. Pelham, Pelham provided Yost with the E-Mail correspondence and some brochures (TR 1424). In

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reviewing RX-9A, Yost identified the exhibits as some of the messages that Pelham showed him on May 10 (TR 1425, 1426). Pelham also told Yost some details about his investigation concerning Wollesen's business activities with Bonnie Collins relating to

the Pleasure Company. Yost never heard of the Pleasure Company until it was mentioned by Pelham on May 10, 1991 (TR 1428).

132. After Yost's meeting with Pelham, Yost was present during Pelham's interview with Wollesen. Prior to the beginning of the interview, Mr. Wollesen told Yost that he had been contacted by a representative from the NRC relative to some safety concerns. Yost told him that he was obligated to tell the NRC anything that he knew and to respond honestly (TR 1429, 1430).

133. Pelham's taped interview with Wollesen lasted about an hour (TR 1431). After the interview, Yost met with Hickie in the break room at EOF. Yost tried to convey to Hickie his thoughts. Yost felt that Wollesen had used company property and facilities in conduct of his business activities (TR 1433).

134. Yost told Hickie what Wollesen had said about the NRC, and what he had said in return (TR 1433). Regarding open safety issues, Wollesen gave a rather confused answer to Mr. Pelham. The bottom line was that Wollesen told Pelham that he didn't have any that he knew about at that time. He interjected something about problems he knew about back in 1988, but he didn't believe they existed anymore (TR 1436).

135. Mr. Yost recommended to Mr. Hickie that Wollesen be terminated on the basis that he had used company property, engaged in business activities on company time and that Wollesen had not been forthright and honest in addressing those issues in previous conversations (TR 1436, 1437). On May 3, 1991, Yost provided Wollesen an opportunity to be honest about his involvement in business activities, and during those conversations, Wollesen minimized his involvement. Based upon the information that John Pelham had given to Yost, it was Yost's feeling that Wollesen was not honest with him during their May 3rd discussion. It left Yost with a genuine concern about Wollesen's overall credibility (TR 1437). Yost was present when Bruce Hickie terminated Wollesen (TR 1438). Yost felt that there was no way a company computer could be used by an employee for a personal for-profit business (TR 1440).

136. During the time Wollesen worked for Yost, Wollesen

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discussed what he perceived to be problems. One issue centered on the calibration program requirements, and another issue centered on the use of a document by the NGRC (Nuclear General Review Committee) (See TR 1424, 1425). Wollesen believed any instrument that didn't have a calibration sticker was not suitable for use in the plant. They discussed calibration status using mechanisms other than calibration stickers (TR 1442). It was obvious to Yost that Wollesen felt strongly that there was a problem. Yost challenged Wollesen: to document the problem, to site criteria being violated and to specifically demonstrate the problem. Wollesen was unable to do so (TR 1445).

137. Yost never quite understood what Wollesen perceived to be the problem with the NGRC. They had an unofficial notebook which contained some documents used as guidance or quick reference which was not controlled. Wollesen believed it needed to be controlled. Similar to the instrument calibration conversation with Wollesen, Yost told him to identify the established criteria, and specifically state how that criteria was being violated.

138. In Yost's opinion, Mr. Wollesen's performance as a member of the audit team was not adversely affected by bringing his concerns to Yost's attention. (TR 1446). Neither of these conversations played a part in Yost's recommendation that Wollesen be terminated.

139. Yost was unaware that Wollesen had been referred for psychological evaluation in 1987. Yost did not receive input from Joe Lander or Jeff Warren prior to recommending that Wollesen be terminated.

140. Yost has never conducted a for-profit business outside of his employment with Florida Power Corporation, nor has he observed other employees of Florida Power conducting a personal for-profit business while at work with Florida Power (TR 1447).

141. Each employee at Florida Power is instructed that he has an obligation to ensure that the plant is operated in a safe manner; that is, personal safety, radiological safety, and to report incidents of violations of those kinds of standards. During the time that Wollesen worked for Yost, Wollesen was never reprimanded because of voicing concerns to Yost. Yost never threatened Wollesen as a result of their discussions about the instrument calibration stickers or the NGRC (TR 1451).

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142. Mr. Yost identified CX 28 as an audit evaluation of Mr. Wollesen that Yost requested, dated April 26, 1991. This evaluation played no role in Yost's recommendation to terminate Mr. Wollesen (TR 1470).

143. Yost characterized Jeffrey Peet as being ambitious (TR 1472). Mr. Peet made serious allegations, and Callahan's removal from the Audit Team was a serious matter (TR 1473, 1474).

144. With regard to CX-29, reports generated by Yost regarding his counseling of Wollesen, Mr. Wollesen never saw the memorandums that Yost created after the counseling sessions (TR 1478).

145. Yost was aware that Wollesen was working on a paper that was to be delivered to the Instrument Society of America. Wollesen told Yost that he was collecting information at the EOF for that purpose (TR 1483).

146. Mr. Yost was Wollesen's immediate supervisor. He knew for months that Wollesen was interested in selling shoes, and he initiated no disciplinary action against him. Yost knew this before May 2, 1991 (TR 1492, 1493).

147. Yost did not have evidence that Wollesen engaged in for-profit activities after Yost's warning of May 3, 1991 (TR 1499).

148. Yost never observed anyone conducting a for-profit business at the Crystal River facility. Yost did not see Wollesen actively engaged in buying or selling products (TR 1518).

149. Before Yost recommended that Wollesen be terminated, he was familiar with Wollesen's personnel file. However, he did review it when Wollesen came into his group. There was nothing in Wollesen's personnel history that influenced Yost's decision to recommend that Wollesen be fired (TR 1522).

150. Wollesen came in to work before his assigned time. He put in more than the minimum hours in his work day (TR 1526).

151. To Yost's knowledge, Wollesen did not engage in activities on behalf of the Audit Section between May 3 and May 10, 1991. Wollesen did not express safety concerns to Mr. Yost between May 3 and May 10, 1991. Yost found out on May 10, 1991 the extent of Wollesen's private business activities during his employment.

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On May 3, 1991, Yost did not know anything about the Pleasure Company (TR 1528).

152. When Jeffrey Peet wrote evaluations, his comments generally tended to offend people. This was his style of writing (TR 1533).

153. Victor Hernandez supervised Mr. Callahan, Mr. Stevens and Mr. Wollesen just before Mr. Yost became supervisor. Hernandez told Yost that they were all good quality people, well qualified, and they could do the job. Hernandez did not say anything derogatory about Wollesen (TR 1535).

Jeffrey Peet

154. Peet has been employed by Florida Power Corporation for five years. He graduated in December of 1986 from the University of Florida with a degree in civil and mechanical engineering (TR 1537). Peet worked with complainant, Ed Wollesen, from approximately December of 1990 through the beginning of May 1991. At the time the Audit and Surveillance groups at Florida Power were merged, Peet was a member of the Audit Section. He was an Audit Team Leader on four occasions prior to the merger (TR 1538). In April of 1991, Peet was placed in charge of an environmental qualification

audit which was scheduled for a four-week block. Members of the Audit Team consisted of Bob Nicholas, Pete Gerrardin, Jerry Sions, Ed Wollesen, Dale Stevens and Chuck Callahan (TR 1539). Typical work hours at St. Petersburg were 8 a.m. to 5 p.m., with an hour for lunch. At Crystal River, typical work hours were from 8 a.m. to 4 p.m. During the time they worked together, Peet had an opportunity to observe Mr. Wollesen at work (TR 1540).

155. Peet once observed Wollesen talking on the phone. Wollesen's area was a cubicle without a door (TR 1542). On this occasion, Peet wanted to talk to Wollesen, but after a minute or two, Peet decided to keep going until Wollesen finished with his telephone call. The conversation involved Wollesen giving instructions on how to fix the other person's pool chlorinator. Peet said that he recalled Wollesen on the telephone the next day talking about birds he had for sale. Also, in going to the printer, he found a flier for the sale of used cars (TR 1543). The flier had Wollesen's name on it, and Peet saw it posted on bulletin boards throughout the plant. This was Wollesen's daughter's car.

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Wollesen actually owned the car (TR 1544).

156. Around April 18, 1991, Peet overheard Wollesen on the telephone talking about the sale of shoes. Peet was concerned that Wollesen was not doing his work (TR 1545).

157. On or about Wednesday, April 31, 1991 (sic), Peet talked to Wollesen at the fax machine while documents were coming through about shoes. Wollesen couldn't leave the machine because the pages were coming through. Wollesen picked them up, folded them and put them under his arm as they came off the machine. On the first sheet, Peet could see that there was a picture of a boot, and he remembers seeing shoes. Peet told Wollesen that he was concerned about getting their work-related activities on track (TR 1547).

158. Peet identified CX 25 as a report he wrote. He believed what he said in the report 100 percent. Prior to writing the report, no one in management made derogatory comments about Mr. Wollesen. On a personal level, Peet got along fine with the team members (TR 1559, 1560).

159. Concerning Peet's evaluation of Chuck Callahan, in April of 1991, during the week of the 15th, Chuck Callahan threatened Peet's technical advisor that he was going to knock his head off. Peet witnessed this event (TR 1562). Regarding Peet's relationship with Callahan, Stevens and Wollesen on a professional level, Callahan was knowledgeable. It was difficult getting work from Dale Stevens. With Ed Wollesen, he and Peet got along on a personal level, but the work product that Peet received from Wollesen was poor. Peet was unaware of safety or security issues raised by Wollesen during the course of the audit which were not incorporated in the ultimate audit report (TR 1563).

160. Regarding CX-25, Peet's evaluation of Wollesen, issues raised by Wollesen during the course of the audit had no influence on Peet's evaluation (TR 1564). Peet understood Florida Power Corporation's management attitude was one of encouragement to report safety violations. It was part of the job of being in quality programs (TR 1567).

161. Peet never observed other individuals at Florida Power Corporation doing outside business on company time except for Ed Wollesen (TR 1567). Peet has never observed other individuals using company assets, computers, etc., for personal business on

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company time. Regarding Peet's observations of Wollesen conducting personal business, Peet conveyed this information to his supervisor, Ray Yost. This information was conveyed at the end of the week of April 15, 1991. Peet expressed his concerns again during the week of April 29, 1991, just prior to closing the audit. He conveyed this information in person (TR 1569).

162. Even though Peet was not Callahan's, Wollesen's or Steven's supervisor, he had to know their whereabouts (TR 1576). As far as what Peet told Yost, Peet remembered that Wollesen was on the phone talking about chlorinators and the sale of birds (TR 1580).

163. Peet denied that he had any conversation with Mr. Callahan about seismic requirements, or laughing about such requirements. Peet said that Callahan was removed within 24 hours of the pre-audit conference (TR 1584).

164. With regard to the evaluation which Peet performed on Callahan, Stevens and Wollesen (CX 25), Peet sent it to Ray Yost and Bruce Hickie (TR 1586). Peet did not feel the evaluation was confidential (TR 1586). Near the end of April and the beginning of May, 1991, Peet thought he saw Bruce Hickie in the hallway informally and told Hickie that he was having problems with Wollesen being on the phone on personal business. Peet may have mentioned the sale of shoes, birds and chlorinators (TR 1589).

Larry Kelly

165. Larry Kelly testified that he is the Director of Nuclear Operations Training Center, and he has held the position for three years. He has been working for Florida Power for approximately 16 years (TR 1597). The Training Center is responsible for all of the training conducted at Crystal River 3 (TR 1595).

166. Bonnie Collins worked at the Training Center Library, and her duties, for the most part, were the responsibility for filing documentation and maintaining EOF cabinets. Among other things, she was doing lesson plan updates. Her supervisor was Terry Kamann (TR 1596).

167. Kelly has never served as Mr. Wollesen's supervisor in any capacity. On or about May 1, 1991, following a staff meeting, Bruce Hickle mentioned to Kelly that Wollesen had been down at the

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Training Center picking up lesson plans or materials, and Hickle wanted Kelly to know that Wollesen was not conducting an audit (TR 1601).

168. After a practice drill conducted on May 2, 1991, Kelly asked Terry Kamann to find out from Bonnie Collins what Wollesen was taking away. Kamann reported back that it was one or two lesson plans (TR 1602, 1603). Kelly subsequently spoke to another person at the Training Center, Bernie Komara, who told Kelly that Wollesen was carrying away more material than just a couple of lesson plans. Because of the variance, Kelly decided to ask security to check it out. Kelly talked to John Pelham (TR 1607). Kelly asked Pelham to investigate how much was being taken by Wollesen and for what purpose. This was the morning of May 7, 1991 (TR 1608).

169. That same day, Kelly gave Pelham additional information. As a result of a report from Mr. Komara that Komara saw messages going back and forth between Wollesen and Collins on a monitor associated with Kelly's local area network, Kelly asked LAN administrator Mr. Pombier to look into the E-Mail messages to see what kind of messages were going back and forth (TR 1609-1610). Pombier was able to produce a message from Wollesen to Collins, and it had on it a list of Pleasure Company products. It obviously appeared to Mr. Kelly to be an outside business. When Kelly saw the message, he wanted the investigation expanded to look into Bonnie Collins' computer to find out what additional information was associated with this business (TR 1613).

170. Kelly identified RX 5 as material on a disk taken from Bonnie Collins' desk (TR 1614). Pombier printed the information. The exhibit appeared to be a Pleasure Company shopping list, forms, training information and list of recruits (TR 1615). Kelly had this information on May 7, 1991. Kelly called John Pelham to training to see the new information (TR 1616).

171. Kelly identified RX 9B as some of the E-Mail messages he looked at when John Pelham came down to the Training Center. They were a factor in his decision to terminate Ms. Collins (TR 1620). Kelly also saw the Pleasure Company catalog. He also saw an envelope in which the catalog had been mailed to someone at the plant. Kelly identified RX 4 and RX 4A as the catalogs which he saw and which Mr. Pelham had showed him (TR 1635). Kelly identified RX 23 as a Florida Power mailing envelope.

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172. Before recommending that Ms. Collins be terminated, Kelly spoke to Mr. Jim DeLonzo with Human Resources. Bruce Hickie was present at the meeting. Kelly wanted to make sure that Human Resources agreed that the information that he had on Ms. Collins warranted termination (TR 1640, 1641). Kelly's reasons for terminating Ms. Collins were as follows: her business had occurred over a long period, from October of 1990 to May of 1991; there was a question of integrity because there was extensive use of company resources; and, Kelly felt the nature of the Pleasure Company business was an embarrassment to Florida Power Corporation (TR 1641). Kelly knew that Collins was in business for an extended period from October of 1990 to May of 1991 from the index of the computer disks (TR 1656).

173. Kelly set up an interview with Ms. Collins to see if there were mitigating circumstances. It took place Friday morning, May 10, 1991, at the Training Center (TR 1643). Present were Terry Kamann, John Pelham and Bonnie Collins. After the interview, Mr. Pelham spoke with Mr. Kelly. Pelham confirmed what they already knew, and there were no mitigating circumstances (TR 1644). Kelly then talked to Ms. Collins and informed her that she was being terminated for violation of company policy No. 1 and company policy No. 5 (TR 1645).

174. Kelly identified RX 7 as the conflict of interest rule, company policy No. 1, that "no employee shall be employed by or engaged in any outside business whether or not such business deals with the company." Kelly identified RX 8 as company policy No. 5, which states that "Florida Power corporate computers are to be used as required in support of employee's job function only" (TR 1646). Florida Power microcomputers may, however, be used for limited non-business usage. Usage must be after usual business hours, only in a non-profit situation, and the employee's non-business related files or programs must be maintained on personally owned diskettes (TR 1646, 1647).

175. Kelly identified RX 25B as a letter which he wrote on May 10, 1991 to Mr. Gary Bolt, Vice President of Production, concerning the termination of Bonnie Collins. Gary Bolt reports to Pat Beard (TR 1647). Kelly consulted with his superiors, and they approved of terminating Ms. Collins.

176. Before Bonnie Collins was terminated, she made no written or verbal complaints concerning unsafe conditions or practices at

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the Training Center (TR 1651). Prior to her termination, Kelly had no knowledge that Terry Kamann directed Ms. Collins to hide a controlled manual from the EOF cabinet during a drill that occurred at the EOF (TR 1652).

177. Kelly testified that, before terminating Ms. Collins, he saw a pink business card on the bulletin board which depicted a lady who appeared scantily clad. He told Mr. Kamann to take the card down, and had Mr. Kamann tell Bonnie Collins, whose name appeared on

the card, not to put the card up again (TR 1654). The first time Kelly knew that Collins was using Florida Power assets in furtherance of the Pleasure Company was when her E-Mail messages were pulled by Mr. Pombier. The first time Kelly knew that Collins was in business since October of 1990 was when he saw the index from her computer disk on May 7, 1991 (TR 1657, 1658).

178. On one occasion, Kelly came into the lobby and saw flower arrangements with a price tag on them. When he found out that Mr. Kamann had placed the flowers in the lobby, Kelly told Kamann to remove the flowers because it wasn't appropriate (TR 1658). Kelly was not aware of other for-profit businesses on Florida Power premises.

179. Kelly was familiar with the progressive disciplinary system, however, he felt that Ms. Collins' offense was serious, that it was extensive and that it occurred over a long period. Her extensive use of company resources, and the nature of the product being a potential embarrassment to Florida Power Corporation, added up to terminating Ms. Collins (TR 1661, 1662).

180. The first time Kelly spoke to Bruce Hickie about the Pleasure Company and Ms. Collins' and Mr. Wollesen's involvement was on May 9, 1991, in John Pelham's office (TR 1664).

181. Mr. Kelly knew Ed Wollesen. He's not sure how they met, but he saw him around the plant. Kelly had no knowledge of Wollesen being referred for psychological evaluation in 1987 (TR 1667). He had no knowledge of Mr. Wollesen's responsibility for the PM-200 program, and he had no knowledge of Mr. Wollesen writing a burnout memo to Mr. Jeff Warren. He had no knowledge of what Mr. Wollesen was doing on the job (TR 1668). Kelly had no knowledge, prior to terminating Ms. Collins, about Mr. Wollesen making complaints of safety violations, irregularities, violations of the Nuclear Regulatory Commission, IMPO guidelines, federal laws, state

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laws or Florida Power policy and procedures. The only involvement that Kelly had in Mr. Wollesen's termination was informing Bruce Hickie of what his investigation had uncovered (TR 1669).

182. Kelly testified that, even though Collins was using her own disks, she was using the company computers for a for-profit business. Most of what he uncovered was activity all through the day, at numerous times during the day, not just during her lunch hour. She shouldn't have been using the company computer for a for-profit business at any time (TR 1673).

183. Kelly testified that it was a common practice for contractors to put their logos and phone numbers on hats, coffee cups, pens and pencils. This was a form of advertising for them (TR 1679).

184. Kelly's initial concern was that the lesson plans might be used for resale to outside contractors for sale to other utilities. This thought triggered Mr. Kelly to initiate an investigation (TR 1683). Mr. Kelly was unaware that Wollesen was working on a paper and researching the paper at EOF (TR 1689). Kelly was not sure when he learned that Mr. Ellsbury approved Wollesen taking one lesson plan. Kelly was not sure if he learned that prior to Wollesen's termination or just after the termination (TR 1690). Kelly did not speak to Mr. Ellsbury prior to the termination (TR 1691).

185. In terminating Ms. Collins, integrity was an issue. In one of the E-Mail messages, Ms. Collins said that, if confronted, she would lie (TR 1693).

186. When Kelly learned that Mr. Kamann brought in two flower arrangements for the lobby of the newly opened building, Kelly did not investigate Kamann's E-Mail to see if he was conducting business on the corporate E-Mail system, he didn't search his disk drive to find out if he was creating documents for the Ozello Keys Winding Trail Gift Shop Corporation on the company computer, and he didn't fire Mr. Kamann (TR 1695, 1696). Kelly heard that Kamann sold some of his crafts to some of the clerical folks that worked for him, and Kelly saw in court that Bonnie Collins purchased knit butterflies in the amount of \$37.50. After hearing Mr. Kamann's sworn statements regarding the sales, Kelly did not ask Mr. Pombier to research the computer to find out the nature and extent of Mr. Kamann's for-profit sales activities at Florida Power Corporation

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(TR 1697). Kelly became aware of Mr. Kamann's activities during the course of this litigation, and he still has not made up his mind exactly what to do about it. Kelly testified that the circumstances surrounding the Collins case and Terry Kamann's sales were substantially different (TR 1700).

187. Kelly was aware that Delores Stark, who works for Terry Kamann, made silk flower arrangements. Kelly asked around and understands that Stark has never made flower arrangements on Florida Power time, but she did bring some in and deliver them to Florida Power employees. Kelly did not know if she sold them on the premises. Kelly did not look into her E-Mail system because he felt he had all of the information. It was his understanding that she delivered silk flower arrangements a couple of times (TR 1700, 1701).

188. Kelly had no information regarding Sam Mansfield selling NUSKIN products on the premises until it came up during this investigation. Kelly went to see Sam Mansfield and asked him about it, and Mansfield said that he brought in a magazine on one occasion and had it in his desk and took it back home. Mansfield said that he did not sell anything at the Training Center. Kelly had no reason not to take Mansfield's word because he had no information to the contrary. He did not pull Mansfield's E-Mail or look at his computer, and he didn't ask Mr. Pelham to investigate (TR 1702).

189. Prior to terminating Ms. Collins, Kelly consulted primarily with Mr. Gary Bolt, and he had a conversation with Mr. Beard (TR 1707).

190. Kelly identified CX 82A as the business card that he saw on the bulletin board around the latter part of 1990 or early 1991. It had Bonnie Collins' name and phone number on it. It was clear to Mr. Kelly that Ms. Collins was doing business for profit and advertising on the premises (TR 1718). Kelly felt the nature of the business was unclear. The card said, "Lovely Lingerie and All Manner of Wonderful Things," and shows a scantily clad woman holding lingerie. Kelly told Mr. Kamann to make sure the card was taken down and not put up again. Kelly did not ask Mr. Pombier to look into Ms. Collins' computer. He did not ask Mr. Pelham to investigate (TR 1719). Kelly didn't feel that any discipline was warranted (TR 1720).

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191. When Kelly saw the business card in late 1990 or early 1991, he thought it involved clothing (TR 1739). The first time Kelly knew of a personal relationship between Collins and Wollesen was when he saw the E-Mail (TR 1741). When Kelly saw the shopping list for the Pleasure Company on or about May 7, 1991, Kelly then associated the Collins business card which he saw on the bulletin board on or about November of 1990 (TR 1745, 1746). However, Kelly did not have an idea of how long Collins had been in business until he looked at her computer disks (TR 1747).

192. After Collins' disk was found with all of the Pleasure Company material, Kelly did not think that he had a termination situation. But the disk itself had dates and times when Collins was at work (TR 1751). The disk had the title scratched out. It had previously been used for a lesson plan. Florida Power material had previously been on the disk, and it had been erased and the Pleasure Company information put on (TR 1752). Kelly suspected that Wollesen was involved in the Pleasure Company after he saw a Pleasure Company form sent from Wollesen to Collins (TR 1753). After looking at Collins' computer, the investigation led to Wollesen's computer, and that's when Pombier and Pelham obtained the E-Mail messages (TR 1754). The first time Kelly saw the catalog was May 9, 1991 in Mr. Pelham's office (TR 1756).

193. Kelly was unaware of any person engaging in for-profit business on Florida Power property other than what he discovered during this litigation (TR 1721).

194. With regard to the lesson plans that Mr. Wollesen removed from EOF, Kelly never determined that Wollesen did anything wrong with the manuals and lesson plans (TR 1725).

195. Kelly spoke to Terry Kamann on or about May 7, 1991, and Kamann said that he knew Collins had an outside business, but he did not know she was conducting the business on company time (TR 1757).

196. Had the shopping list involved the sale of flowers, Kelly would have been less inclined to investigate the situation. Because of the type of material and the nature of the business, it bothered him more. It was a major factor why Kelly decided to terminate Ms. Collins (TR 1759). When Kelly saw the Collins business card on the bulletin board, he had no suspicion that Collins was engaging in a for-profit business on the premises. He

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didn't know what the card represented. All he knew was that he wanted the card off of the board (TR 1762). When Kelly saw the shopping list for the Pleasure Company on or about May 7, 1991, he then associated the Collins business card (TR 1745, 1746). Kelly did not have an idea of how long Collins had been in business until he looked at her computer disks (TR 1747).

Terry A. Kamann - Recalled

197. Kamann testified he has worked for Florida Power Corporation for about nine years and presently he is a Nuclear Training Control Supervisor. As of May 10, 1991, he supervised Bonnie Collins (TR 1763). He supervised Collins for about 3-1/2 years. Kamann supervised seven clerical personnel, and he worked about 10 to 15 feet away from Ms. Collins (TR 1764).

198. While Kamann and Collins never had a disagreement, on one occasion Ms. Collins went directly to Mr. Kelly without Kamann's knowledge due to a misunderstanding on setting priorities. Collins did not ask Kamann's permission to do so (TR 1765). Over the 3-1/2 years, Collins never brought up a problem to Terry Kamann. Kamann denied that he ever told Bonnie Collins to hide an out-of-date manual (TR 1769).

199. Over a period of 2-1/2 years, Kamann made sales on Florida Power premises to a total of four people (TR 1772). These were sales of craft items, primarily refrigerator magnets. When he first moved into the new building, he brought in some centerpieces from his wife's shop and set them on tables for decorations. These were not for sale. When Mr. Kelly saw the items, he asked that they be removed. On two occasions, Kamann had items displayed in his office (TR 1773). Larry Kelly, to Kamann's knowledge, was never aware of craft sales on company property prior to Ms. Collins being discharged on May 10, 1991.

200. Kamann became aware of Bonnie Collins' Pleasure Company business in October of 1990; however, he didn't know that she was conducting this business on company time. The first time Kamann found out was several days before Collins was terminated (TR 1774). Collins did not ask Terry Kamann's permission to put her business card up on the bulletin board. Mr. Kelly saw the card, thought it was inappropriate, and asked that Kamann remove the business card. Kamann did, in fact, remove the business card, and he passed on to Ms. Collins the inappropriate nature of its posting (TR 1775).

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201. If Bonnie Collins were working at her computer terminal on non-Florida Power Corporation work, this would not have been readily apparent to Mr. Kamann. He would have to actually look at the screen (TR 1778).

202. Mr. Kelly informed Terry Kamann on the morning of May 10, 1991 that Mr. Pelham would be coming at approximately 8:30 and that he would conduct an interview with Ms. Collins, and Kamann was to be present. The purpose of the interview was to determine if there were underlying facts that might affect the decision to fire Ms. Collins (TR 1783, 1784). Kamann heard nothing during the interview which he considered mitigating.

203. Terry Kamann was present during Bonnie Collins' exit interview, and during the interview, Ms. Collins was asked about her activities on company time for profit-related activities, and she did not deny any of these activities (TR 1780). Following the conclusion of the interview, Terry Kamann did not have any conversations with Mr. Kelly (TR 1782).

204. Terry Kamann was not aware of anyone else besides Bonnie Collins and himself conducting a for-profit business on company time (TR 1786).

205. Terry Kamann has not received any form of written reprimand or discharge for his activities. His displays were not proper (TR 1789).

206. As early as the fall of 1990, Terry Kamann knew of the nature of the Pleasure Company business. He knew that marital aids were involved. He felt that whatever Bonnie Collins did on her own time, he didn't care about (TR 1790). Although Kamann saw her business card on the bulletin board, he was not aware that Collins was conducting business on the premises (TR 1791).

207. Seven months before she was fired, Terry Kamann gave Bonnie Collins a competent-plus evaluation. He stated that Bonnie Collins had done an excellent job of coordinating the tedious job of converting and cleaning up electronically stored lesson plans (TR 1798).

208. Terry Kamann had no knowledge of Elaine Rubio preparing non-related Florida Power Corporation work at her computer (TR 1803).

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209. The type of items that Mr. Kelly asked Terry Kamann to remove were artificial greens and sea shell centerpieces (TR 1804). Terry Kamann never made sales to Mr. Beard, Mr. Hickie or Mr. Kelly, only clerical employees. To Terry Kamann's knowledge,

other than Mr. Kelly asking him to remove his display, Mr. Beard and Mr. Hickle were not aware of any of Terry Kamann's sales (TR 1805).

210. The first time Terry Kamann saw RX 4, the Pleasure Company catalog, was after Collins' termination. He never saw Bonnie Collins bring in a display case (TR 1808). Although Terry Kamann connected Bonnie Collins' business card with the type of items that she sold, this was based on information that he had from an outside source, and not based upon anything that Bonnie Collins showed him. Kamann said that he had no knowledge of Bonnie Collins conducting Pleasure Company business on company time until a couple of days before she was fired. She never sold him any items (TR 1809).

211. Kamann knew Ed Wollesen prior to May 1, 1991 on a casual basis. Terry Kamann had no knowledge that Wollesen was involved in businesses other than Florida Power business (TR 1810).

212. Kamann could not see Bonnie Collins' work station from his. He would have to physically leave his office (TR 1811).

213. Terry Kamann did not tell Mr. Kelly about the Pleasure company business prior to Collins' termination (TR 1812). Just before Collins was fired, Mr. Kelly asked Terry Kamann if he had any reason to object to Collins' termination and Kamann said he did not (TR 1813).

John W. Pelham - Recalled

214. John Pelham testified that he is a corporate security specialist for Florida Power Corporation and was so employed in April and May of 1991 (TR 1819). On May 6, 1991, Mr. Kelly told him over the telephone that Mr. Wollesen had been seen removing paper from EOF, and Kelly wanted a meeting the next morning at 9:30 a.m. (TR 1821). At the meeting the next day, Larry Kelly and Bernie Komara were in attendance. Komara told Pelham that he had seen Wollesen removing papers on numerous occasions from the Training Center early in the morning. This was all he learned at the meeting. Pelham may have spoken to Terry Kamann that morning, who told him that Wollesen and Collins may have been in the

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lingerie business together (TR 1822).

215. That same afternoon Pelham received another call from Kelly, who had something to show him. Kelly showed him a computer disk and a printout of E-Mail from Ed Wollesen to Bonnie Collins. Pelham identified RX 9B, pages 34 and 35. He was shown page 35, a Pleasure Company shopping list, by Mike Pombier on Tuesday afternoon (TR 1823, 1824). Pelham was also shown RX 5 and RX 6. Later that evening, he and Mike Pombier went to Wollesen's work area (TR 1827). Pelham was looking for the paper that

Wollesen was taking from the Training Center (TR 1828). Pelham opened a locked file cabinet with a key and he found Collins and Wollesen's E-Mail. He made a copy of the E-Mail and returned the folder to the file cabinet (TR 1829).

216. Pelham identified RX 9A and RX 9B as the documents he found in the locked file cabinet. Pelham asked Mike Pombier if he would run some disks that were in Wollesen's work area (TR 1830). There was some E-Mail on the disks related to the Pleasure Company. Pelham was also given a Pleasure Company catalog by his secretary, Kim Layton (TR 1831). When his secretary brought the catalog to him, it was in a company interoffice envelope. Pelham identified RX 4 as the Pleasure Company catalog which he saw, and RX 23 as the type of company envelope (TR 1832, 1833). Pelham's secretary got the catalog from her roommate, Pat Solke, another Florida Power employee. Bonnie Collins had sent it to her by company mail (TR 1833).

217. Pelham interviewed Bonnie Collins at Mr. Kelly's request (TR 1835). Kelly wanted to determine if Collins had been using company assets, including the use of computers and copying machines, for the Pleasure Company business. Pelham conducted the interview at the Training Center. Present were Ms. Collins and Terry Kamann. Collins gave her permission to tape the interview (TR 1836). Pelham also interviewed Mr. Wollesen, and taped that interview with Wollesen's permission (TR 1838, 1839). Pelham identified RX 15A and RX 15B as the tapes of the Collins' interview (TR 1839) and RX 16 as the Wollesen interview tape.

218. Immediately after the Collins' interview, Pelham met with Kelly in Kelly's office. Pelham told Mr. Kelly that Collins admitted to the use of company assets on company time and her involvement with the Pleasure Company (TR 1843, 1844). Pelham was present when Collins was terminated. Pelham was not asked for any

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recommendation nor did he give one (TR 1844).

219. Present at the Wollesen interview was Ray Yost. Pelham's purpose in interviewing Wollesen was the same as in interviewing Collins (TR 1844). Following the Wollesen interview, Pelham met with Mr. Hickie and told him that Wollesen admitted to the use of company assets, the computer, the copy machines, and was involved in the Pleasure Company. Pelham was present when Wollesen was terminated. Once again, Pelham made no recommendation, nor was he asked to give one (TR 1845).

220. Regarding the Pleasure Company catalog received by Ms. Solke, according to Collins, Solke requested it from Ms. Collins (TR 1864).

Michael K. Pombier

221. Pombier testified that he has been employed with Florida Power for 12 years and presently he is the Supervisor of Special Nuclear Training (TR 1868). He was previously Local Area Network (LAN) Administrator from 1988 until 1991, and Ms. Bonnie Collins was employed at the Training Center while he was a LAN Administrator (TR 1869, 1870). Pombier identified CX 31, and remembered that he was face to face with Bonnie Collins on or about March 15, 1991 and discussed CX 31 with Collins and Elaine Rubio. They understood the memorandum and they had no questions (TR 1878, 1879, and 1880).

222. On May 7, 1991, Mr. Kelly asked Mr. Pombier if he had noted a large volume of E-Mail traffic between Collins and Wollesen. Pombier said that he had seen messages between the two individuals on several occasions. Kelly asked him to look at their E-Mail (TR 1881). Pombier was able to transfer Collins' messages to his area, and he could read the messages. Pombier identified RX 9A, pages 34, 35, and 36 as the two E-Mail messages that he was able to take from Ms. Collins' area and read. Pombier gave the messages to Mr. Kelly. Kelly then asked Mr. Pombier if he could find additional material at Ms. Collins' work area which was not Florida Power Corporation related (TR 1882).

223. After the library closed, Pombier went to the library and checked Collins' computer's hard drive and did not find anything. There was a box containing about 10 diskettes, and the last three diskettes in the box contained files that were not company related.

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They contained files that were for a private business called the Pleasure Company. Pombier identified RX 6 as the three diskettes (TR 1883). The brand of the diskettes were the same as the brand used at the Training Center for company business (TR 1886).

224. Kelly also asked Mr. Pombier to work with Mr. Pelham in his investigation. Pombier started by looking for E-Mail messages in Mr. Wollesen's area. There were no E-Mail messages stored in his file (TR 1890). Pombier was not able to find diskettes in the area around Wollesen's desk or on his hard drive. Pelham was looking through Wollesen's file cabinets and came across some E-Mail messages that had been printed out.

225. As LAN Administrator, Pombier maintained the clock that was used for the network, and he knew the clock to be accurate. There was a date time stamp placed on every stored file. The date time stamp changes when a document is actually worked upon (TR 1889, 1890). The time placed on the E-mail message is when it is sent out from the originator to the recipient (TR 1891).

226. If Collins was off the network, the time was set by an internal clock within her own computer. One cannot tell whether the times were created by her own computer on the individual data disks, or whether they were created by the network (TR 1898).

227. Pombier saw centerpiece displays at Terry Kamann's desk. Other than that, Pombier was not familiar with anyone else conducting a personal for-profit business at Florida Power (TR 1892, 1893), although he knew Mr. Bill Gwaltney sent E-Mail messages to everyone selling chicken (TR 1898). The Gwaltney chicken messages were for his church, not for-profit (TR 1904).

Joseph Horton Lander

228. Joseph Horton Lander testified that he went to work for Florida Power Corporation in January of 1971, and at the present time, he is an engineering services supervisor in the generation progress department. In September of 1987, Lander was Manager of Nuclear Operations Outage and Maintenance, and at that time, Edward Wollesen came within his supervision; Wollesen's supervisor, Jeff Warren, reported to Lander (TR 1907).

229. Dr. Harry Goldsmith was a psychologist used by Florida Power to screen individuals who came to work at the nuclear power

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plant. He was also hired to train people like Lander to observe subordinates to identify inappropriate changes in behavior. Goldsmith gave him a procedure to follow (TR 1909).

230. There came a time when Lander discovered that Wollesen was complaining about stress and being uncomfortable with his work. Lander asked Jeff Warren to look into it (TR 1911). Lander initially did not refer Wollesen to Dr. Goldsmith because he was seeing a company doctor (TR 1912). However, eventually Lander contacted Dr. Goldsmith, and Dr. Goldsmith told Lander to pull Wollesen's badge and to send him in.

231. Lander spoke to Wollesen ahead of time to avoid embarrassing him. He wanted to take Wollesen's badge in a discreet fashion (TR 1913). Wollesen came back with a recommendation from Dr. Goldsmith to restore his badge and put him back to work. Wollesen did not lose pay as a result of his badge being pulled. As far as Lander recalled, Dr. Goldsmith said that there was no safety problem with Mr. Wollesen.

232. Lander testified he did not tell Wollesen not to contact persons outside his chain of command concerning safety issues (TR 1914). Nor did Lander tell Wollesen not to contact the NRC.

233. After Wollesen came back to work, there were no more contacts with Dr. Goldsmith. At the time Lander left nuclear operations in May of 1988, as far as he was aware, Wollesen had no open safety issues or complaints (TR 1915, 1916). Prior to referring Mr. Wollesen for evaluation to Dr. Goldsmith, Lander referred another worker. This person had family problems, was upset and ran a truck into a train. So, Lander immediately pulled his badge, and referred him to Dr. Goldsmith (TR 1916, 1917).

234. Lander did not know what Mr. Wollesen raised with Mr. McKee (TR 1919). Lander did not know how many times Dr. Goldsmith saw Mr. Wollesen (TR 1921). This was before he was referred to the psychologist. Wollesen did not report directly to Lander. Lander knew that he was complaining about being burnt out and working too many hours (TR 1923).

235. Lander knew that Wollesen had concerns about the PM-200 Program. Lander tried to assure Wollesen that his concerns could be taken care of by going through the proper procedures (TR 1924).

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Elaine Marie Rubio

236. Elaine Rubio has been employed by Florida Power Corporation for 10 years, and she is a Nuclear Training Clerk. She has had this position since August of 1988. She works at the Training Center, and she worked with Bonnie Collins at the Training Center (TR 1927). They have the same supervisor, Terry Kamann. She worked about four feet away from Ms. Collins (TR 1928). She considered herself a friend of Ms. Collins. Ms. Rubio was aware of Ms. Collins' attitude and relationship with Mr. Kamann, and Ms. Collins never indicated any fear of Mr. Kamann (TR 1929). Collins did not like Mr. Kamann. She didn't like how Mr. Kamann handled problems in the library (TR 1932).

237. Ms. Rubio had no information concerning Mr. Kamann directing that a manual from the cabinet be hidden during the 1991 drill (TR 1933, 1934).

238. Ms. Rubio was aware that Ms. Collins became involved in the Pleasure Company in October or November of 1990 (TR 1936). Ms. Rubio saw Ms. Collins typing different forms, making dates for parties and getting directions for parties. She also received phone calls pertaining to the Pleasure Company. Ms. Rubio took messages for Collins. This occurred at different times during the day (TR 1937). Ms. Rubio has also seen the catalog related to the Pleasure Company before, and has seen Mr. Wollesen at the Training Center in the company of Ms. Collins (TR 1938). Ms. Rubio overheard conversations by and between Wollesen and Collins regarding the Pleasure Company. They were about different forms and where they were going to handle the business together (TR 1939).

239. Ms. Rubio sold burritos at the Training Center twice in 1988. She's had no for-profit activities on Florida Power Company time since 1988. She saw Terry Kamann display craft items at the Training Center, and this took place during the holidays, in particular Christmas (TR 1941). She purchased products from him (TR 1948)

240. Ms. Rubio had no knowledge if Larry Kelly was aware of Ms. Collins' Pleasure Company business activities prior to Collins' discharge (TR 1942, 1943).

241. Ms. Rubio denied that she was selling Sea Escape trips at

the Florida Power facility (TR 1946). She organized the trips but never received anything for her efforts (TR 1947). With regard to the Victoria School of Dance, Ms. Rubio testified that she was helping them out with their forms. Her daughter went to the studio, and Ms. Rubio volunteered to help (TR 1953). This was not for-profit. Ms. Rubio identified CX 35 as Victoria's School of Dance forms which she worked on at Florida Power during work hours (TR 1968).

Bernard Paul Komara

242. Mr. Komara testified that he is a training inspector for quality assurance and quality control personnel at Florida Power Corporation. He has worked at Florida Power for 13 years. In March and April of 1990, Komara was employed by the quality programs department. He was a Senior Quality Auditor, and his office was located in the Training Center (TR 1971). His duties were to develop and provide training in various areas, and to coordinate training with department personnel on whatever topics were deemed appropriate.

243. Komara identified RX 45A as a memo he generated, the addressee being Victor Hernandez. At the time, Hernandez was the supervisor in the quality audit surveillance section. Wollesen was in the Quality Programs Department in April of 1990 (TR 1972, 1973). He worked for Victor Hernandez. The purpose of generating RX 45A was to review the memo with employees concerning company policy for company computers (TR 1973).

244. Komara identified RX 45B as a completed training record which had been routed back to his area representing Hernandez's section. Wollesen's name appears on the attendance record. The purpose of receiving the attendance record was to verify that training was performed. One of the subjects that was covered by the training was Florida Power's Policy Number 5, Security, Computer Service (TR 1975).

Steven Chernenko

245. Steven Chernenko testified that he has been working for Florida Power Corporation since May of 1982. He is Senior Quality Auditor in the Quality Programs Department, and he has occupied that position since December of 1991 (TR 1989, 1990). Chernenko was certified as an Audit Team Leader shortly after he began his

employment with Florida Power Corporation in 1982. He has served as an Audit Team Leader in excess of 25 times (TR 1993).

246. In February of 1991, Chernenko served as an Audit Team Leader, the audit team consisting of Jeff Peet and Ed Wollesen. The audit team was to evaluate two independent review organizations, the Plant Review Committee and the Nuclear General Review Committee. Mr. Peet was responsible for the Nuclear General Review Committee located in St. Petersburg, and Wollesen was responsible for the Plant Review Committee, which is an on-site organization (TR 1994). During the course of that particular audit, Mr. Wollesen handed Mr. Chernenko a document of 27 pages of information (TR 1995). The information was difficult to decipher. It was not in usable format. Chernenko could not present it to management because, in some cases, it didn't make sense. However, after reviewing it with Mr. Wollesen, six items were identified on problem reports (TR 1996).

247. Mr. Wollesen did not raise issues with Chernenko at the time of the issuance of the final report, nor did he raise issues with Chernenko concerning the way with which his audit was being dealt. Chernenko identified CX 14 as the final audit report (TR 1997). Page 6 contains two of the issues raised by Mr. Wollesen, and they're identified as being non-significant problems. Page 7 contains another problem report originated as a result of the audit activities by Mr. Wollesen (TR 1999). Those were evaluated and determined to be non-significant problems (TR 2000). Chernenko verbally told Mr. Yost how difficult it was to use the original information given to Chernenko by Wollesen (TR 2002). During the course of the February 19, 1991 audit, Chernenko never told Wollesen to ignore issues. Chernenko has never been directed to cover up or ignore problems which he found during the course of an audit (TR 2003). Chernenko has never feared retaliation if he raised problem issues (TR 2007).

Polly Hickle

248. Polly Hickle testified that she is employed by the Citrus County School Board as a Program Coordinator for the Speech Language Impaired Program and the Pre-Kindergarten Early Intervention Program (PHD, p. 4). Mrs. Hickle is certified as a speech pathologist by the State of Florida. She has been employed by the Citrus County Board of Education for 10 years.

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249. Mrs. Hickle married Bruce Hickle in August of 1974, and they live together as man and wife (PHD, p. 5). In November of 1990, Mrs. Hickle was invited to attend a lingerie party by a friend of hers, Judy Fowler. The party was held at Judy Fowler's home in Crystal River (PHD, p. 6). Before going to the party, she told her husband that she was going to a lingerie party and that was all. There were approximately 12 people there, and the presentation was made by a woman named Bonnie. Later, Polly found out it was Bonnie Collins (PHD, p. 7). The party lasted a couple of hours, and it was similar to a Tupperware Party. Some products were demonstrated, and then people filled out order forms on what they wanted to purchase. Polly Hickle ordered some products and signed an order form (PHD, p. 8). Polly Hickle paid for the products with Master Card. Polly

Hickle has not seen Bonnie Collins since that evening in November of 1990, nor has she had conversations with Bonnie Collins (PHD, p. 9).

250. After the party, she went home and did not discuss the party with her husband, Bruce Hickle. She did not tell Bruce Hickle that she had purchased products. She subsequently did receive her products. Judy Fowler brought them with her to school and gave them to her after class. The products were sealed in a brown bag. Mrs. Hickle did not show Bruce Hickle any of the products which she purchased, nor did she discuss the products with him (PHD, p. 10).

251. Polly Hickle knows Mr. Wollesen. She either met him at her school, or at a Christmas party at her home (PHD, p. 11). Mrs. Hickle did not know that Edward Wollesen had any involvement in the Pleasure Company. He was not at the November 1990 lingerie party at Judy Fowler's home. Mrs. Hickle has not attended other lingerie parties since November of 1990 (PHD, p. 12).

252. Prior to May 10, 1991, Mrs. Hickle did not discuss with her husband, Bruce Hickle, who made the presentation at Ms. Fowler's home in November of 1990. Mrs. Hickle has never been employed by Florida Power Corporation. Prior to May 10, 1991, Mrs. Hickle has not discussed with her husband any investigation that was being conducted concerning Bonnie Collins (PHD, p. 13).

253. When Mrs. Hickle attended Judy Fowler's lingerie party, she was aware that Judy Fowler was a Florida Power Corporation employee (PHD, p. 14). There was a woman named Delores who attended the lingerie party, and Polly Hickle knew that she was

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also a Florida Power Corporation employee. Judy Fowler told Mrs. Hickle that someone from work, meaning Florida Power Corporation, was making the presentation at the lingerie party (PHD, p. 15).

254. Mrs. Hickle identified CX 49 as having her signature (PHD, p. 16). It was only after Ms. Collins and Mr. Wollesen had been dismissed from their positions that she found out that the Bonnie at the lingerie party in November of 1990 was Bonnie Collins. Bruce Hickle mentioned to her that Mr. Wollesen was dismissed. Mrs. Hickle put two and two together, and thought when he mentioned Bonnie Collins, it was the same Bonnie that was at her lingerie party in November of 1990, and she mentioned that to Mr. Hickle. This conversation was after their dismissal from Florida Power Corporation. On this occasion, Mrs. Hickle told her husband that she attended a party given by Bonnie Collins (PHD, p. 17). Mrs. Hickle works with Mrs. Wollesen, and that may have been the reason why Bruce Hickle brought up the fact that Ed Wollesen was fired (PHD, p. 18). However, she did not tell her husband that she had ordered some products. The name Pleasure Company was specifically mentioned in this conversation, and this is how she tied it together (PHD, p. 19).

255. Bruce Hickie told Mrs. Hickie that while he was at deposition, it came out that Mrs. Hickie had ordered products and Mr. Hickie asked her about it. She still had some of the products she ordered at home (PHD, p. 20 & 21). The purpose of purchasing these products was for personal use and for gifts. She never gave away any of the items (PHD, p. 22).

256. Prior to May 10, 1991, Mr. Hickie did not speak to Mrs. Hickie about an investigation concerning Mr. Wollesen and Ms. Collins (PHD, p. 23).

Bonnie Collins in Rebuttal

257. Elaine Rubio also sold t-shirts on the plant premises, and she was involved with Sun State Travel and sold Sea Escape tickets. Rubio told her that for each ten tickets that she sold, she would receive one free ticket for herself. Rubio told Collins that she had sold her ten tickets, and she had won her free ticket. She tried to sell Collins a ticket (TR 2057).

258. As far as Mr. Wollesen taking out stacks of documents two to three feet high from EOF, Collins just remembered one occasion

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when Wollesen took out documents from her library area. On this occasion, Mr. Ellsberry approved the removal. There were approximately two other times that Mr. Wollesen removed documents from EOF (TR 2071).

259. With regard to the clock on Collins' individual computer, it was an internal clock which was not accurate because Collins did not know how to set the clock. The disk she was using for the Pleasure Company was given to her by a friend (TR 2074).

260. Mr. Kamann displayed his craft products perhaps three times a year. When you walked into his doorway, directly in front of you was a filing cabinet that had little magnetic crafts. Also, to your left on the far wall, he had some crafts that were set up which were larger and not magnetized. The crafts could be seen from the hallway. There were little white stickers with prices on the stickers (TR 2075).

261. When Collins was typing messages and sending them to Wollesen and using the computer, she was doing this between the hours of 7:00 a.m. and 3:30 p.m. (TR 2080).

Edward Wollesen in Rebuttal

262. Wollesen denied that he used the company fax for a shoe business or for any other personal business (TR 2082). After the counseling session with Mr. Yost on May 3, 1991, Wollesen engaged in some private for-profit businesses, but neither on company time nor on company property (TR 2090).

263. Mr. Yost did not ask Wollesen at the final interview whether he had open safety concerns. During the interview, knowing how nuclear safety issues were to be handled, Wollesen could not disclose them to Pelham nor anyone else because he doesn't go around blurting out everything to everybody (TR 2092).

264. Wollesen denied that he could discuss safety issues with his supervisor, Mr. Yost, at anytime. Wollesen said that he would have to go through his Audit Team Leader (TR 2103).

Findings of Fact and Conclusions of Law

The findings and conclusions which follow are based upon a review of the entire record in light of the arguments of the

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parties, applicable statutory provisions, regulations and pertinent precedent.

Whenever I reference the evidence as summarized above, paragraphs I through 264, I am predicating my finding and/or conclusion on said evidence. Therefore, I hold the referenced testimony and/or exhibit to be true and accurate and a finding of fact herein. If there is a conflict in the evidence, I will present all sides, resolve the conflict, and state my rationale.

265. Florida Power Corporation (FPC) is an electrical utility engaged in the generation, transmission and distribution of electricity. It maintains a generation complex near the City of Crystal River, Florida, which consists of a nuclear generating unit, Crystal River 3 (CR3), and four (4) fossil plants. In conjunction with the operation of CR3, FPC maintains an Emergency Offsite Facility (EOF) including a Nuclear Training Center approximately fourteen miles from CR3 (TR 482-83).

266. FPC is subject to the Energy Reorganization Act of 1974 (ERA), 42 U.S. § 5851 *et seq.* (1983) and Complainants, Edward Wollesen and Bonnie Collins, worked for FPC (TR 30).

267. Wollesen was employed by FPC in April, 1981 and was thereafter employed as a Nuclear Technical Support Technician; I&C and Electrical Training Specialist; Nuclear Maintenance specialist; Senior Nuclear Quality Assurance Specialist; and Senior Quality Auditor until his discharge on May 10, 1991 (TR 346-51).

268. Collins was employed by FPC in March, 1980, and worked in a clerical position at CR3 until 1986, when she transferred to the Nuclear Training Center as a clerk, where she remained employed until her discharge on May 10, 1991 (TR 481-82, 633).

269. Complainants filed a complaint with the Secretary of Labor on June 5, 1991, (TR 31) alleging retaliatory discharge for engaging in conduct protected by section 210 of the ERA, 42 U.S.C § 5851. Specifically, Section 5851(a) states that:

No employer ... may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions or privileges of employment because the employee...

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(1) commenced, caused to be commenced or is about to commence or cause to be commenced a proceeding under this Chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C.A. § 2011 et seq.], or a proceeding for the administration or enforcement of any requirement posed under this Chapter or the Atomic Energy Act of 1954 as amended...

The sole issue to be determined is whether the Respondent's decision to terminate the Complainants' employment was in retaliation for their engaging in protected activity.

270. In interpreting and applying Section 210, the Secretary of Labor and the Courts have utilized the burden of proof scheme developed by the Courts in cases arising under Title VII of the Civil Rights Act of 1964, and the Age Discrimination of Employment Act. *Dartey v. Zack Co.*, 82-ERA-2 (SOL 1983) (burden of proof scheme utilized in *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981) is to be followed in ERA cases). In order to establish a viable case of retaliatory discharge under the ERA, the Complainants must prove (1) that they engaged in activity protected by Section 210; (2) that the Respondent was aware of such protected activity; (3) that the Complainants were the subject of an adverse employment action; and (4) that the Complainants' protected activity was the likely reason for the adverse action. *Id.* at 7-8.

271. Assuming the Complainants are able to produce evidence sufficient to meet their prima facie burden, the burden of production shifts to the Respondent. This burden is not one of proof, but simply production, and Respondent can meet this burden by articulating a legitimate, nondiscriminatory reason for the adverse employment action. Where the Respondent articulates legitimate, nondiscriminatory reasons for the actions taken, any inference of discrimination raised by the prima facie case is dispelled. Complainants can then prevail only by establishing that the Respondent's articulated reasons were pretext for discrimination based on conduct protected by the ERA. *Burdine*, 450 U.S. at 252-253. The ultimate burden of proof or persuasion that intentional discrimination has occurred always rests with the Complainant. *Dartey*, 82-ERA-2, p. 8.

272. Reporting safety and quality problems internally to one's

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employer is a protected activity under the Energy Reorganization Act and other environmental statutes enumerated in 29 C.F.R. § 24.1 *See Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984); *Kansas Gas & Electric Co. v. Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied* 478 U.S. 1011, 92 L.Ed.2d 724, 106 S. Ct. 3311 (1986).

Whether Complainants Engaged in Protected Activity and Whether Respondent Was Aware of Said Activity

Edward Wollesen

273. I find that Edward Wollesen engaged in protected activity. I base this conclusion on his testimony, and on the testimony of others, that Wollesen reported safety and quality problems internally to his superiors. He also conversed with an investigator for the Nuclear Regulatory Commission (NRC) the day before he was fired.

274. Wollesen was most persistent in his complaints about the instrument calibration or the PM-200 program. I predicate this finding on Wollesen's testimony and various exhibits. (TR 153-178 and CX 73 - CX 75.)

275. I find that at the time Wollesen was terminated, his supervisor, Ray Yost, (a) was aware of Wollesen's complaints about the calibration program (see paragraph 136); and (b) was an individual directly involved in terminating Wollesen (see paragraph 135).

276. Also, the day before Wollesen was fired, he spoke with Oscar DeMiranda, an investigator for the NRC (See para 18). Ray Yost was aware of the NRC contact. (See paras 20, 27, and 132.) Pat Beard and Bruce Hickie were also aware of the contact. (See paras 67, 100, 115, and 134.)

277. Yost recommended to Mr. Hickie that Wollesen be terminated (para 135). Hickie decided to terminate Wollesen and sought Pat Beard's concurrence (para 101). Beard, as Vice President of Nuclear Operations, was ultimately responsible for firing Wollesen. Both Hickie and Kelly recommended terminating Wollesen, and Beard concurred (paras 65, 67).

278. The above considered, I find Edward Wollesen engaged in

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protected activity and Respondent was aware of said activity.

279. Collins argues that she engaged in protected activity based upon events which occurred a month or two before she was fired. Collins claims her supervisor, Terry Kamann, told her to hide from NRC inspectors an out of date manual (TR 547, 548). Collins testified that the only person she complained to about hiding the manual was Kamann himself (TR 643). Her "complaint" to Kamann, if true, would constitute protected activity.

280. However, I am not persuaded that this event took place for several reasons: a) Collins went directly to Larry Kelly, Kamann's supervisor, on a prior occasion when she felt Kamann was incorrectly prioritizing her work. Kelly took action and Collins was not disciplined in any way. (See paras 41, 198). Collins failed to explain why she was afraid to tell Kelly about the outdated manual. (b) Terry Kamann denied the incident (TR 1769). (c) There is evidence from co-worker, Elaine Rubio, that Collins did not fear Kamann (TR 1929), and (d) Rubio, who worked about four feet away from Collins, knew nothing of the incident. (See para 237). For these reasons, I find Collins has failed to show she engaged in protected activity concerning the alleged manual incident.

281. I note Collins has not alleged other activities and/or complaints which would constitute protected activity. (See para 41). Therefore, standing alone, Collins cannot make a prima facie case under the ERA. However, Collins travels under another theory, which, if true, is viable and sustainable under the ERA. Collins argued at trial: (a) Wollesen was a whistleblower, (b) FPC wanted to get rid of him because of his whistleblowing activities; (c) if FPC fired Wollesen under the pretext that Wollesen was conducting Pleasure Company business on FPC premises, using FPC resources, FPC would have to fire Collins too since she was doing the same (TR 24, 26).

282. Thus, Collins' case rises or falls depending on the merits of Wollesen's claim. If Wollesen makes out a case under the ERA, it would be proper to review the evidence further to determine whether Collins' theory is supported. If Wollesen's case fails, there will be no further inquiry on Collins' claim.

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**Whether Claimant Wollesen's Protected Activity Was the
Likely Reason He Was Fired by FPC**

283. Respondent alleges that Complainant Wollesen was fired for violating company policy number 1 entitled, "Conflict of Interest" and company policy number 5 entitled, "Security." (See TR 1176, 1178.) Essentially, FPC claims Wollesen was fired for conducting a private, for-profit business on company time, on company premises, using company resources, i.e., company computers. Wollesen claims he was fired for engaging in protected activity and raises what he believes to be circumstantial evidence to support his theory which will be examined below.

Personal, For-Profit Business on Florida Power Premises

284. Most troubling for FPC would be disparate treatment of Wollesen; i.e. that the individuals responsible for firing Wollesen were aware of others engaging in personal, for-profit business on FPC premises, and allowed them to do so with immunity, while firing Wollesen for the same activity. Before reviewing evidence in this regard, it is important to establish the identity of the individuals responsible, either directly or indirectly, for the decision to terminate Wollesen. Note that I am excluding the investigator, John Pelham, since there is no evidence whatsoever that he had input in the decision to fire Wollesen. Likewise, I am excluding Jeffrey Peet. While Peet may have suspected Wollesen was conducting a for-profit business on FPC premises, there is no evidence that he either directly or indirectly participated in the decision to fire Wollesen. I am also excluding Terry Kamman. While he exercised poor leadership in conducting his own flower and craft sales (paras 59, 209), and thus set a bad example for his staff, there is no evidence that Kelly knew the extent of his business or that Kamman had input in the decision to fire Wollesen. I find the evidence shows: Wollesen's supervisor, Ray Yost, recommended to Bruce Hickie that Wollesen be terminated (TR 1436, 1437); Bruce Hickie, Operations Manager, Crystal River 3, recommended to Pat Beard that Wollesen be terminated (TR 1176, 1178); Pat Beard, Senior Vice President for Nuclear Operations, was ultimately responsible for firing Wollesen (TR 919, 920); Larry Kelly, Director of Nuclear Operations Training Center, recommended to Beard that Wollesen be fired (TR 919, 920) and, finally, before Hickie and Kelly recommended to Beard that Wollesen be terminated, they consulted with Jim DeLonzo, Manager of Human Resources (TR 1175). Therefore, I find the following individuals responsible for the decision to terminate Complainant Wollesen: Ray Yost, Bruce

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Hickie, Larry Kelly, Jim DeLonzo, and Pat Beard. If any of these individuals discriminated against Wollesen for conducting a personal for-profit business on FPC premises while others operated with immunity, this would constitute circumstantial evidence in Wollesen's favor. Also, if the evidence shows that these same individuals were aware of Wollesen conducting a for-profit business on company time (including Pleasure Company business), and did nothing about it until an event took place which could be characterized as protected activity on Wollesen's part, and then fired Wollesen on the pretext of conducting Pleasure Company business, this too would constitute circumstantial evidence in Wollesen's favor.

285. As of November, 1990, Wollesen either had engaged or was engaging in a whole host of moonlighting activity while employed by FPC. Rather than review here his private business activities, I accept as true his testimony in this regard and incorporate by reference paragraph 8 above. Wollesen's testimony that he did not perform outside business activities during the time he was required to be working for FPC is doubtful, especially in light of the evidence concerning the Pleasure Company. However, the case does not hinge on Wollesen's credibility on this point. What is important is what did the

named individuals, Yost, Hickle, Kelly, DeLonzo, and Beard know and when did they know it?

286. After carefully reviewing the evidence, I find: Yost was aware that Wollesen was involved in the sale of shoes (para 128); that on or about May 3, 1991, Yost was aware Wollesen was answering questions about pool chlorinators while on the job (paras 19 and 129). There is no evidence that Yost was aware of others conducting a for-profit business on FPC premises. In fact, Yost denied any such knowledge (para 140).

Hickle had no knowledge of other FPC employees conducting a personal for-profit business on company time, on company property as of May 10, 1991⁴ (para 103). As of May 3, 1991, Hickle was aware that Wollesen was conducting for-profit businesses on FPC premises. I made the following inquiry of Mr. Hickle at trial:

"JUDGE LESNIAK: Let us go to May 3, 1991.
Apparently, you had conversations with Ray Yost concerning Mr. Wollesen prior to May 3, 1991, as to what he was doing down in the EOL.

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THE WITNESS: We had that conversation.

JUDGE LESNIAK: When was the first time you learned from Mr. Yost that Mr. Wollesen was conducting an outside for-profit business? Was it prior to the verbal warning of May 3, 1991?

THE WITNESS: It was prior to that because Mr. Yost talked it over with me prior to talking to Ed, but I couldn't testify as to when that actually occurred.

JUDGE LESNIAK: So you agreed then that as of May 3, 1991, you were aware that Mr. Wollesen was conducting a for-profit business on the premises.

THE WITNESS: At that time it appeared that there was several activities, several businesses or a business, several activities which involved business, outside businesses.

JUDGE LESNIAK: As of May 3, 1991? (TR 1367)

THE WITNESS: As of May 3.

JUDGE LESNIAK: What did Ray Yost know, if you know, about Mr. Wollesen's outside for-profit businesses?

THE WITNESS: Ray knew what he had been told from his people, from the people that worked for him, including Jeff Peet, as I testified. Ray also said to me that he had observed Ed involved with things that didn't look like they were audit related. I told Mr. Yost that I had also observed Ed involved with things that to me were questionable, people that he would be meeting in the lobby that didn't look like--didn't appear to be audit business.

JUDGE LENSIAK: I understand Ray Yost had his sources, one of them being Mr. Peet.

THE WITNESS: Right.

JUDGE LESNIAK: But what business, to your knowledge, did

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Mr. Wollesen have on or about May 3, 1991?

...

THE WITNESS: Pets, shoes. Well, more than one pet. There were birds, horses, shoes. (TR 1368)

THE JUDGE: Horses?

THE WITNESS: Horses. That's what he mentioned to me. That's what I remember just right offhand.

JUDGE LESNIAK: What about the sort of business, never mind the name of the business, but the sort of business that the Pleasure Company is?

THE WITNESS: No. We had no knowledge of that.

JUDGE LESNIAK: No knowledge of that. To your knowledge, did Mr. Yost have any knowledge?

THE WITNESS: No, I don't think that he did.

JUDGE LESNIAK: All right. So what you are saying then is that Yost was to counsel Mr. Wollesen about the bird

business, his horse business, and his shoe business. Is that correct?

THE WITNESS: Not exactly. Mr. Yost -- what I understood was Mr. Yost was going to talk to Mr. Wollesen about doing company business -- I'm sorry -- private business on company time as an issue or as a general matter.

JUDGE LESNIAK: You were going to try to handle this as a low profile, responsible --

THE WITNESS: Tell him knock it off, simply get his commitment to do that.

JUDGE LESNIAK: Was it a termination offense, in your mind, as of May 3, 1991, the horses, the shoes, the birds, technically? (TR 1369)

THE WITNESS: Technically, it may have been, but I didn't have any hard evidence at that time. I had

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information from other employees. The amount of time that Mr. Wollesen was spending was -- we believed was interfering with his ability to get his audit work completed. I couldn't quantify that, so it was kind of a -- what I'm saying is on my level it was soft information.

JUDGE LESNIAK: You were not going to fire him over this sort of thing, is that correct, shoes, birds?

THE WITNESS: Well, again, it was soft information. I didn't have any documentation. We hadn't done an investigation of any kind that would be a formal investigation.

JUDGE LESNIAK: Well, there came a time when Mr. Yost counseled Mr. Wollesen. Is that correct?

THE WITNESS: Yeah, on May 3.

JUDGE LESNIAK: Did you confirm through Mr. Yost on that occasion that yes, Mr. Wollesen was doing birds, shoes, horses?

THE WITNESS: Yeah. He mentioned several businesses to me. Those are the ones that I recall him mentioning.

JUDGE LESNIAK: So he confessed to these businesses. (TR 1370)

THE WITNESS: Well, the only thing he said was -- the only thing he confessed to was that he would occasionally receive calls -- pool chlorinators was another one.

JUDGE LESNIAK: What?

THE WITNESS: Pool chlorinators.

JUDGE LESNIAK: Pool?

THE WITNESS: Yeah, chlorine.

JUDGE LESNIAK: Chlorine.

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THE WITNESS: Additives for pools. And he would occasionally receive calls from people that he had sold things to wanting to know about those things. And so he never really -- Ed, Mr. Wollesen, never said that he was engaged with these businesses. So we had conflicting information at that time. We had what Ed had told Ray and we had what Jeff Peet and some of the audit people had observed." (TR 1371)

Kelly saw a pink business card on the bulletin board which depicted a lady scantily clad (para 177). Kelly identified CX 82A as the business card that he saw in the latter part of 1990 or early 1991. It had Bonnie Collins' name and phone number on it, and it was clear that Collins was doing business for profit and advertising on the premises. Kelly felt the nature of the business was unclear. He thought it involved clothing (TR 1739). Kelly told Collins' supervisor, Terry Kamman to make sure the card was taken down and not put up again (para 196).

On another occasion, Kelly came into the lobby and saw flower arrangements with a price tag on them. When Kelly found out that Kamman placed the flowers in the Lobby,

Kelly to Kamman to remove the flowers because they were inappropriate (para 178). Kelly was unaware of other for-profit businesses on FPC premises (para 178, 193).

DeLonzo did not testify. Hickle and Kelly consulted with DeLonzo prior to recommending to Beard that Wollesen be fired. DeLonzo felt that if Wollesen was conducting Pleasure Company business on FPC property, then that was a dischargeable offense (TR 1174). Under the circumstances, any and all knowledge which Hickle and Kelly had about others or Wollesen engaging in personal, for-profit businesses on FPC premises will be imputed to DeLonzo.

Beard had no negative information about Wollesen prior to learning about the Pleasure Company in late April, 1991 (para 62). Beard did not know that FPC employees were conducting for-profit business on company premises prior to learning about the Pleasure Company (para 70).

287. The evidence shows that neither Ray Yost nor Bruce Hickle were aware of others conducting a for-profit business on FPC premises (paras 103, 140). Therefore, I find that Yost and Hickle

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did not discriminate against Wollesen on the basis that they allowed others to operate personal for-profit business on FPC property and not Wollesen.

During the time Wollesen worked for Yost, Wollesen engaged in protected activity regarding the calibration program requirements (see para 136). It is most unlikely that if Yost planned to discriminate against Wollesen for this protected activity, that Yost would make a speech praising Wollesen on April 22, 1991, Wollesen's 10th year with the company (para 5).

There is evidence that before May 3, 1991, Yost knew Wollesen was involved in the sale of shoes (TR 1413) yet he overlooked it and did nothing until on or about May 3, 1991, when Hickle told Yost to find out what Wollesen was doing and to tell him to "knock it off" (para 127, TR 1369). Wollesen had no memory that Yost told him his activities were unacceptable (TR 292). However, I believe Yost and Hickle's version since they corroborate each other and it makes more sense. I find that Yost and Hickle were aware of the above described protected activity and on or about May 3, 1991, when they had some information about Wollesen's outside business, rather than digging deeper, they gave him a break; they warned him to cease his outside business activities. This is incompatible with a theory that they were looking for a pretext to fire him for complaints about the calibration program. For the above reasons, I find that neither Yost nor Hickle, as of May 3, 1991, used Wollesen's private business activities as a pretext to fire him for engaging in the protected activity described in paragraph 274 above.

288. There is no evidence to contradict Pat Beard's testimony that he had no negative information about Wollesen prior to learning about the Pleasure Company in late April, 1991 (para 62) and that he had no information that other FPC employees were conducting private, for-profit businesses on FPC premises (para 70). Therefore, I find Wollesen cannot show that Beard discriminated against him based upon the theory that Beard allowed others to conduct personal, for-profit businesses on FPC property with immunity. Furthermore, if Beard had no negative information prior to late April, 1991,⁵ Beard could not have known about Wollesen's businesses as described in para 8 above.

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289. In the latter part of 1990 or early 1991, Kelly saw Collins' business card on the bulletin board. It appeared to him that Collins was advertising on FPC property and he took immediate action; he told Terry Kamman to make sure the card was taken down and not put up again (para 196). This is corroborated by Elerry Kamman (para 200) and Collins herself (para 34). Kelly testified, and there is no evidence to the contrary, that when he saw the business card, he had no suspicion that Collins was engaging in a for-profit business on the premises (para 196).

Therefore, I find that Kelly's instructions to take the card down from the bulletin board and not put it up again, was a rational, measured response and in no way supports a theory that Kelly discriminated against Wollesen by not disciplining Collins further.

Likewise, when Kelly saw Kamman's flower arrangements in the lobby (see paras 178, 186), he took immediate action; he ordered their removal. I find Kelly's response rational and does not support a theory of discrimination or disparate treatment. The nature of the Pleasure Company business bothered Kelly and it was a major factor in why he decided terminate Collins (TR 1759). I will discuss the Pleasure Company in more detail below. Suffice to say that I agree with Kelly that the nature of the two businesses were substantially different, and I find Wollesen cannot show that Kelly allowed others to conduct personal, for-profit businesses with immunity.

290. The above considered, paragraphs 283 through 289, I find Complainant Wollesen has failed to show that the individuals responsible for the decision that he be terminated discriminated against him by allowing others to operate private, for-profit businesses on FPC property with immunity, while firing Wollesen for the same activity. Also, as of May 3, 1991, the evidence fails to show that the named individuals in paragraph 284 above were aware that Wollesen was conducting a for-profit business on company time and did nothing until an event took place which could be characterized as protected activity, and then fired him on the pretext of conducting Pleasure Company business.

The Reorganization

291. There was a great deal of testimony at trial concerning the November, 1990, reorganization of the Quality Programs Department shortly after Bruce Hickle became Operations Manager at Crystal River 3. The reorganization adversely affected Wollesen

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(see para 6). I do not believe Wollesen was ever able to articulate a coherent argument of discrimination based upon the reorganization; however, assuming Wollesen has any argument whatsoever, I find Wollesen was selected as the displaced person because he occupied the over-staffed position (para 124) and he had the least experience in the quality surveillance group (para 81). Further, the evidence shows that the managers at FPC did what they could do to protect him. They held on to him until a position became available in the section. The situation was resolved when an employee found another position which created a vacancy on or about April, 1991, into which Wollesen was placed (see paragraphs 24, 74, 79-83, 124). I can find no evidence that Wollesen's protected activity caused the reorganization or caused Wollesen's status as a displaced person. On the contrary, I find Messrs. Yost, Hickle, and Beard did what they could to protect him until April, 1991, when the situation resolved.

What Did Bruce Hickle Know About the Pleasure Company and When Did He Know It?

292. If this was a law school moot court case, the professor threw in a curve ball: Bruce Hickle was a key player in the decision to fire Wollesen. His wife, Polly Hickle, attended a Pleasure Company party⁶ in November, 1990. The party was hosted by a friend of Mrs. Hickle, and the presentation was made by Bonnie Collins (para 249). Polly Hickle paid \$129.00 for various products (para 254, CX 49).

293. Stretching the inferences to the limits, the following issues must be resolved: Did Bruce Hickle know Bonnie Collins presented the Pleasure Company party which his wife attended in November, 1990?; Did Bruce Hickle know Bonnie Collins was conducting Pleasure Company business on FPC property perhaps as early as November, 1990?; if so, Did Bruce Hickle keep silent about Collins' business until Wollesen became involved and because Wollesen engaged in protected activity, used the Pleasure Company as a pretext to get rid of Wollesen and necessarily Collins?

294. The only witnesses who know the answers to the above questions are Bruce and Polly Hickle. Their testimony is consistent and uncontradicted.

The first time that Bruce Hickle became aware of the

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Pleasure Company was when he was called to John Pelham's office May 9, 1991. In the fall of 1990, Mr. Hickle's

wife, Polly Hickle, told him that a friend of hers asked her if she wanted to go to a lingerie party. Hickle was never sure who was hosting the party. Mrs. Hickle went to the party and when she returned, she said she had a good time. She did not say whether she purchased products (para 86). As of the date of trial, Mr. Hickle had not seen items purchased by Polly Hickle. The name, Bonnie Collins, never came up in conversation with Polly Hickle. Prior to May 9, 1991, Mr. Hickle did not know that Bonnie Collins or Edward Wollesen were connected to the Pleasure Company. Hickle never had discussions with anyone concerning the party his wife attended in the fall of 1990. Prior to the preparation for the hearing in this case, Mr. Hickle never saw the order form for items purchased by Polly Hickle (CX 49, para 87). Hickle testified that he never saw the items listed on CX 49 at home. He never asked his if wife she purchased anything from the Pleasure Company (para 107). CX 49 shows that the bill was paid by Master Card. The Master Card statement is sent to Mr. Hickle's home, but his wife pays the bill (para 119).

Mrs. Hickle testified that in November of 1990, she was invited to attend a lingerie party by a friend of hers. She told her husband she was going to a lingerie party and that was all. There were approximately 12 people there, and the presentation was made by a woman named Bonnie. Polly Hickle ordered some products and paid for the products with Master Card. Polly Hickle has not seen Bonnie Collins since that evening in November of 1990, nor has she had conversations with Bonnie Collins (para 249). After the party, Mrs. Hickle went home and did not discuss the party with her husband. She did not tell Bruce Hickle that she purchased products. She subsequently did receive her products. They were sealed in a brown bag. Mrs. Hickle did not show Bruce Hickle any of the products she purchased nor did she discuss the products with him (para 250). Prior to May 10, 1991, Mrs. Hickle did not discuss with her husband the identity of the individual who made the presentation at her friend's home in November of 1990. Prior to May 10, 1991, Mrs. Hickle has not discussed with her husband any investigation being conducted concerning Bonnie Collins

(para 252). Mrs. Hickle was aware that a FPC employee was making the presentation at the lingerie party (para 253). Mrs. Hickle identified CX 49 as having her signature, and it was only after Ms. Collins and Mr. Wollesen had been dismissed from their positions that she found out that the Bonnie at the lingerie party in November of 1990 was the Bonnie Collins who had been dismissed by FPC. After Bruce Hickle mentioned to her that Mr. Wollesen and Ms. Collins were dismissed, Mrs. Hickle put two and two together and figured out that it was the same Bonnie that was at her lingerie party in November of 1990, She mentioned it to Mr. Hickle at that time (para 254). Bruce Hickle told Mrs. Hickle that while he was at a deposition, it came out that Mrs. Hickle had ordered products and Mr. Hickle asked her about it. She still had some of the products which she ordered at home for personal use and gifts (para 255). Prior to May 10, 1991, Mr. Hickle did not speak to Mrs. Hickle about an investigation concerning Mr. Wollesen and Ms. Collins (para 256).

295. It is hard for me to believe that Bruce Hickle did not know about the products his wife ordered sometime before May 10, 1991, for two reasons: the items were expensive, \$129; and they are of a highly personal nature presumably for a man and a woman. As I said at trial, as politely as possible, the stipulation which included Bruce Hickle's testimony that Polly Hickle made no mention of anything that she purchased and that he never saw the products which she purchased, did not have the ring of truth (TR 1074).

296. However, the issue of whether Bruce Hickle saw the items purchased by his wife prior to May 10, 1991, is not critical. I believe Mrs. Hickle's testimony that Mrs. Hickle did not know the full name of the person who gave the presentation at the party in November, 1990, and that it was only after Bonnie Collins and Ed Wollesen were dismissed by FPC that Mrs. Hickle figured out that the Bonnie at the November, 1990, party was the same Bonnie Collins dismissed by FPC. This does have the ring of truth and for this reason, I find for FPC on all of the issues mentioned in paragraph 293. I find further, since his testimony is uncontradicted, that Bruce Hickle became aware of the Pleasure Company and Wollesen's involvement for the first time on May 9, 1991.

Was Management Trying to Get Rid of Callahan/ Stevens/Wollesen?

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297. Charles Callahan and Roger Stevens were Senior Quality Auditors for FPC (paras 46 and 51) at the time Wollesen joined their division. An audit occurred on or about March/April, 1991, in which Jeff Peet was the team leader (para 48). If I accept as true

Callahan's and Stevens' word that all three men (Callahan, Stevens, and Wollesen) were frustrated because the team leader, Jeff Peet, did not allow them to evaluate to EQ program; that the audit went wrong; that Peet tried to cover an audit that went wrong; that Peet's evaluation of the audit and the performance of the three individuals was a total fabrication; that Peet did not know what he was doing, all of these suppositions (paras 48, 49, 50, 55) do not add to Wollesen's case for these reasons: I have already found that Wollesen engaged in protected activity and the audit about which Callahan and Stevens testified has nothing to do with Wollesen conducting private, for-profit business on FPC property, using FPC resources; secondly, if management had taken Peet's evaluation seriously, as Callahan said, they would have been fired (para 50) but instead, Callahan and Stevens are still employed by FPC and were eventually certified as audit team leaders (TR 817, paras 57, 125, 143). Finally, I credit Yost's testimony that when Peet wrote evaluations, his comments tended to offend people. This was his style of writing (para 152).

298. For the reasons set out in para 297, I find that the evidence does not support the conclusion that management was trying to get rid of Callahan, Stevens, and Wollesen.

The Issue of Progressive Discipline

299. It is agreed that when the individuals identified in para 284 discovered Wollesen was involved in Pleasure Company business on FPC premises, they did not counsel or suspend him; Wollesen was allowed a final interview and then fired.

300. My inquiry is limited to whether the harshness of the punishment was discriminatory and whether it constitutes evidence supporting the conclusion that Wollesen's protected activity was the likely reason he was fired.

301. Wollesen has not offered evidence that other similarly situated FPC employees received or were offered progressive discipline. The only other person similarly situated was Bonnie Collins, and she also was fired.

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302. Yost articulated legitimate reasons why he recommended that Wollesen be terminated (para 135). Finally, Beard, Hickie, and Kelly explained progressive discipline was company policy but not mandatory and could be disregarded for serious offenses (paras 72, 104, 179).

303. For these reasons, I find that there is no evidence to suggest that FPC management discriminated against Wollesen by not offering progressive discipline.

Wollesen's Final Interrogation

304. I listened to the tape recording (RX 16) of John Pelham's interrogation of Ed Wollesen on May 10, 1991, at 1:45 p.m. with Ray Yost present, and simultaneously read the transcript of the tape (RX 14).

305. Initially, I note Wollesen said that during the process of his employment at CR3 he brought up certain issues during audits but he did not feel as of May 3, 1991, that they were safety concerns. They were concerns (RX 14, p. 1). Also, a person named, Oscar LNU (last name unknown) from the NRC contacted him May 9, 1991, about 8:15 a.m. Wollesen did not know why the NRC would call him at home (RX 14, p. 2). Oscar LNU asked Wollesen if he ever felt intimidated and Wollesen said, "Yes" (RX 14, p. 3). Oscar LNU was concerned about a letter which Wollesen had written (RX 14, p. 3).

306. Wollesen admitted being a distributor for the Pleasure Company (R 14, pp. 7, 8, 12) and discussed the product line (RX 14, pp. 11, 12), that he had one employee, that she made some sales ' and that he was involved with the company for about a month (RX 14, p. 13). Wollesen said the items in the Pleasure Company Catalog should not be associated with FPC at all (RX 14, p. 17), however, admitted to designing a sheet for Pleasure Company use and transmitted it over the computer to Bonnie Collins (RX 14, p. 17).

307. I used the word, "interrogation" and not "interview" in this section purposely because that is exactly what took place. John Pelham used scare tactics because as he said, "he wanted answers" (RX 14, p. 40), he wanted Wollesen, "to tell the truth" (RX 14, pp. 5, 8, 9). John Pelham was a witness in court, and I would describe him as a large, imposing gentleman. At times,

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Pelham intimidated Wollesen, especially by inquiring into Wollesen's personal relationship with Bonnie Collins (RX 14, pp. 11 and 12). Pelham used the carrot and the stick approach. He said he did not want to go into Wollesen's personal life but made it perfectly clear to Wollesen that he knew all about their affair.

308. I can even agree with Wollesen that the timing of the interrogation could not have been worse for him. What father would not be preoccupied when his daughter was about to be married? Wollesen was on vacation for that purpose (RX 14, p. 2). Wollesen told Pelham that, "his mind was worried about weddings and people." Pelham returned Wollesen back to the mark and told him in a strong voice, " ... I need an answer." (RX 14, p. 4).

309. There is no doubt in my mind that Pelham intimidated Wollesen into what little information Wollesen gave and if this were a criminal case, the "confession" would be thrown out of court. However, all of this does not add up to discrimination, just heavy handed tactics. I can make no inferences whatsoever from this final interrogation which help Wollesen's case.

The NRC Contact

310. Prior to the beginning of Wollesen's interrogation on May 10, 1991, Wollesen told Ray Yost that he had been contacted by someone from the NRC about safety concerns (para 132, RX 14, p. 2). Wollesen knew what was coming; he had visited Bonnie Collins before the interrogation and she told him she was fired because of her involvement in the Pleasure Company (para 26). Collins told Wollesen she thought he was going to be fired too based upon the questions that were asked about the Pleasure Company (para 44).

311. Wollesen testified that he told Yost about the NRC contact to find out anything else he needed to do for Florida Power in talking with Mr. DiMiranda (para 27). However, it is clear to me, and I so find that Wollesen's revelation to Yost was a veiled threat made to deflect FPC's investigation and/or interrogation; Wollesen reported the NRC contact to Yost because he knew that his termination so close in time to the NRC contact would give the appearance of adverse employment action as a result of the contact. Yost did the right thing; he told Wollesen to tell the NRC whatever they wanted to know (paras 27, 132) and to tell the truth (para 132).

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312. By this time, the decision to fire Wollesen was fait accompli. Yost, Hickie, and Beard already had hard evidence on Wollesen's involvement in the Pleasure Company and the final interrogation added nothing (paras 63, 91, 92, 131).

313. For these reasons, I find Wollesen has failed to show a nexus between the NRC contact by Oscar DiMiranda on May 9, 1991, and his termination.

The "Burn-Out" Letter

314. Wollesen testified that he was referred for a psychological evaluation as a result of making an internal safety related report to the plant manager, Paul McKee, in 1987 (TR 210). Wollesen was recommended for psychological evaluation, and the Respondent claims that it was after Wollesen sent a speed letter to Jeff Warren on July 16, 1987, entitled, "Burn-Out" (CX 53). Wollesen stated in the letter, "I have been pushed beyond what my body and mind can stand. Therefore, I will have to cut back to 8 hours and what can be accomplished. If I can with stand (sic) the stress and push for 10's, I will. All of us will push beyond our limits, even if we are not scheduled tight. We support you and FPC. Please listen to us. We are not trying to hurt anyone." (CX 53, p. 1).

315. Assuming for the sake of argument that internal reports filed by Wollesen in 1987 constituted protected activity and that the request for psychological evaluation had something to do with Wollesen's internal reporting, Wollesen has failed to show that either Yost or Hickie who made the decision to discharge him from employment more than 3 years later had knowledge of the reports. I find that Yost was unaware that Wollesen had been referred for psychological evaluation in 1987 and that Yost did not

receive input from Joe Lander or Jeff Warren prior to recommending that Wollesen be terminated (para 139). I find further that Hickle had no involvement with Wollesen concerning the subject matter of CX 53. Prior to recommending Wollesen's termination, Hickle had no knowledge that Wollesen had been referred for psychological evaluation in 1987, or that Wollesen had been instructed by Mr. Lander not to make complaints to any person other than through the chain of command. Mr. Lander never worked for Mr. Hickle. Mr. Hickle did not consult with Joe Lander at arriving at the decision to recommend Wollesen's termination, nor did he consult with Jeffrey Warren or Dr. Harry Goldsmith (para 84).

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316. I further find that Mr. Beard, as of the fall of 1990, heard no derogatory comments about Mr. Wollesen. He did not hear that Wollesen had a history of making internal complaints (para 76). Mr. Kelly knew Ed Wollesen from around the plant. I find that Kelly had no knowledge of Wollesen being referred for psychological evaluation in 1987, had no knowledge of Wollesen's responsibility for the PM-200 program, and he had no knowledge of Wollesen writing a burn-out memo to Mr. Jeff Warren (para 181).

317. I find that Wollesen has failed to show that the individuals responsible for his termination knew of complaints that he may have made in 1987, and Wollesen failed to show that these individuals knew he was referred for psychological testing in 1987. I find that the burn-out memo of 1987 and the circumstances surrounding the memorandum had nothing to do with Wollesen's termination.

Events Leading to Wollesen's Termination

318. During April, 1991, Hickle received reports that Wollesen had been observed on several occasions removing large volumes of printed or written material from the Training Center prior to regular business hours. Hickle thereafter informed Kelly of the reports that he had received about Wollesen. Hickle assured Kelly that Wollesen was asked to stop going there (para 89).

319. Since Hickle had stated that the documents being removed by Wollesen were not in support of an audit, Kelly became concerned that the documents were being removed and used in violation of company policy (TR 1603). As a result, he asked Kamann to speak with Collins regarding her knowledge of the materials that had been removed by Wollesen, since she was responsible for the library in which many of the Training Center documents were filed (TR 1601- 1603).

320. Collins told Kamann that Wollesen had been to the Training Center in the early morning on one occasion and had removed only one or two lesson plans, with the approval of a training instructor (TR 1603-1604). Because Collins' statement as to the volume of material being removed varied considerably with what Hickle had reported, Kelly questioned Bernie Komara, a training instructor at the Training Center (TR 1605).

Komara stated that he had observed Wollesen on several occasions at the Training Center removing large volumes of material (TR 1605-1606). At that point, Kamann questioned Collins again, but she reiterated

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that only one or two lesson plans had been removed (TR 1606-1607). Having received conflicting reports, Kelly requested corporate security to conduct an investigation to identify the materials removed by Wollesen and to determine for what purpose they were removed (TR 1607-1608).

321. Kelly met with John Pelham, Corporate Security Specialist, at the Training Center on the morning of May 7, 1991, and briefed him concerning the observations that Wollesen had removed large volumes of written material from the Training Center (TR 1822).

322. Later that day, Komara informed Kelly that he had noticed a number of E-Mail messages between Wollesen and Collins (TR 1609- 1610). Thinking there might be a connection between the E-Mail messages and the documents being removed by Wollesen, Kelly asked the Local Area Network (LAN) Administrator at the Training Center, Mike Pombier, if he could retrieve those E-Mail messages (TR 1610). Pombier was able to retrieve only one of the E-Mail messages, which was a message dated April 29, 1991, from Wollesen to Collins with an attachment (TR 1613; RX 9A, pp. 34-36). The attachment was a shopping list of products offered for sale by The Pleasure Company (Id.)

323. Based on that information, Kelly expanded the investigation and requested Pombier to search Collins' computer files to determine if there was additional information associated with The Pleasure Company or other businesses (TR 1613). Pombier located three computer disks at Collins' desk on which were stored numerous documents relating to The Pleasure Company, including a shopping list, training information, forms, a list of Collins' recruits, and other Pleasure Company information (TR 1615; RX 5). Pombier printed a copy of the index and materials for Kelly (TR 1615-1616).

324. Kelly then called Pelham, who returned to the Training Center and reviewed this additional information (TR 1616). Thereafter, Pelham inspected Wollesen's computer files and work area, where he located a file containing a compilation of E-Mail messages between Wollesen and Collins, some of which discussed the Pleasure Company business (RX 9A).

325. The following day, May 8, 1991, Pelham obtained a Pleasure Company catalog and Florida Power envelope that had been

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sent to another FPC employee by Collins through the company's internal mail system (TR 1635-1636, 1831-1834; RX 4 and 23).

326. On May 9, 1991, Pelham met with Kelly and Hickle and provided them with the results of his investigation and the documentary evidence that had been accumulated (TR 1148-1149, 1164, 1835).

327. Hickle reviewed the E-Mail messages, the Pleasure Company catalog and a print-out of materials from computer disks during the May 9th meeting (TR 1148-1151, 1168). Hickle thereafter met with Yost to inform him of the investigation (TR 1171). Yost had no knowledge of Wollesen's involvement in the Pleasure Company prior to his meeting with Hickle (TR 1422-1423). Yost subsequently met with Pelham who explained the results of the investigation and showed Yost the documentary evidence (TR 1423-1424).

328. Kelly and Hickle subsequently met with Jim DeLonzo, Crystal River Human Resources Representative, on May 9, to receive input from Human Resources. DeLonzo informed them that if the decision was made to terminate the Complainants, Company policy and past practice would support that decision (TR 1169, 1641-1642).

329. Kelly then asked Pelham to interview Collins the following morning, May 10, 1991, regarding the results of the investigation, and also to provide her an opportunity to articulate any mitigating circumstances (TR 1643, 1835-1836). Hickle decided that Pelham should also interview Wollesen the same day in order to insure that the information would not be compromised (TR 1181).

330. Following the interview, Pelham met with Hickle to brief him concerning the disclosures made by Wollesen (TR 1183). Hickle thereafter met with Yost, Wollesen's immediate supervisor, to discuss the results of the investigation and the interview (TR 1183). Based on the documentary evidence obtained as a result of the investigation and Wollesen's admissions regarding his involvement in The Pleasure Company and other outside businesses, Hickle determined that Wollesen had violated Company policy no. 1, Conflict of Interest, and no. 5, Security (TR 1187). As a result, Hickle recommended that Wollesen be terminated from his employment with FPC (TR 920, RX 25(a)). Beard, Senior Vice President for Nuclear Operations, was ultimately responsible for firing Wollesen. Both Mr. Hickle and Mr. Kelly recommended terminating Mr. Wollesen, and Beard concurred. Beard must approve terminations, so,

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ultimately, Beard was responsible for the termination (para 65).

331. Beard saw the evidence that was collected against Wollesen and Collins. He saw a series of electronic mail messages between the two of them discussing their business. He saw a catalog that was reproduced from the company's computer file, which was a listing of the products that they sold. He read the electronic mail. He also saw another document

that had pictures of the products (TR 937, 938). He saw a Xerox copy of the catalog in the evidence as RX 4 (TR 939). Beard also saw a shopping list, RX 5 (TR 940).

Conclusion

332. The above considered, paragraphs 283-331, and based upon the record as a whole, I find it most unlikely that FPC fired Wollesen because of his protected activity. Instead, I find that FPC terminated Wollesen for the reasons stated in Hickie's memorandum to P. M. Beard dated May 28, 1991 (RX 25(a)).

333. The evidence shows that the individuals responsible for firing Wollesen (Yost, Hickie, Kelly, and Beard) had very little choice. As of May 10, 1991, they knew the nature of the Pleasure Company business and had hard evidence that: it was a for-profit business, it was being conducted or, FPC premises and FPC's computers were being used to further the business. Most of the evidence collected was against Collins since she was a distributor for the Pleasure Company for a much longer period than Wollesen. Nevertheless, the Company officials did have evidence against Wollesen; most damaging in my opinion were the E-Mail messages back and forth between Wollesen and Collins (RX 9A). I find that the message of April 30, 1991, with attachments, from Wollesen to Collins at 1:01 p.m. was particularly significant. With this communication, Wollesen attached a Pleasure Company "shopping list" (R-X 9A, p. 36). The items on the shopping list are pictorially depicted in the Pleasure Company Catalog (RX 4).

Wollesen testified that the items in the catalog were common- place; nothing that he had not seen in Playboy Magazine or Spencer's Gifts (TR 151, 152). I will spare the reader a description of the catalog; however, in my view, when Wollesen brought his Pleasure Company business to FPC, he crossed the line. As Hickie stated in his memo to Beard (RX 25(a)):

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" ... one of the employee's (Wollesen's) business ventures dealt with materials which might have had an adverse affect on the Company's representation and may have been extremely offensive to some of our employees."

Beard felt that the nature of the business was an aggravating factor because disclosure that Company employees were engaged in "that kind of business" would reflect discredit on nuclear operations (para 69). Because of the nature of the business, Kelly felt more inclined to investigate (para 196).

The shopping list certainly could have offended many FPC employees and damaged its reputation in the community. Had FPC knowingly permitted this material on its premises, FPC could have been subject to ridicule and lawsuits. I find that management had to deal with the situation swiftly.

334. For the foregoing reasons, I find that Complainant Wollesen has failed to establish a prima facie case since it was most unlikely that he was fired because of his protected activity. Also, for the reasons stated in paragraphs 281, 282, there will be no further inquiry on Collins, claim.

Dual Motive Discharge

335. Complainants allege, alternatively, that this case should be analyzed under a "dual motive" theory. A "dual motive" case exists when an employer may have had both valid and invalid reasons for taking adverse action against the complainant. Since the evidence establishes that Bonnie Collins did not engage in protected activity and that Edward Wollesen was terminated only for legitimate reasons, the dual motive analysis is not applicable.

RECOMMENDED ORDER

For the foregoing reasons, it is hereby recommended that Complainants' complaints be dismissed with prejudice and that judgment be entered in favor of Florida Power Corporation.

MICHAEL P. LESNIAK
Administrative Law Judge

MPL/dlh
Newport News, Virginia

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[ENDNOTES]

¹ The following citations to the record are used herein:

ALJX - Administrative Law Judge Exhibit;

CX - Complainant's Exhibit;

RX - Respondent's Exhibit; and

TR - Transcript of the Hearings held January 7-10, 1992, and

March 16-20, 1992, in Tampa, Florida.

² I asked the parties if they could come to an agreement with regard to CX-49 in order to avoid the embarrassment of calling a non-party, Polly Hickle, to testify that she attended a Pleasure Company party (See TR 571-578). The parties' agreement concerned Bruce Hickle's testimony. Bruce Hickle would testify that he was sensitive to the work place

and the work environment for other employees concerning Pleasure Company material. The material was not offensive to him, but he was concerned that the material would be offensive to some people on Florida Power premises. Polly Hickle told Bruce Hickle that she was invited to a lingerie party. When she returned, she said she had a good time and met some nice people. She made no mention of purchasing anything and he saw nothing that she purchased. The names of Bonnie Collins and Ed Wollesen with the Pleasure Company never arose and he never connected the two until Mr. Beard's deposition in the fall of 1991. Mrs. Hickle attended the lingerie party in the November 1990. The stipulation did not cover whether the items which Mrs. Hickle ordered were ever delivered. Mrs. Hickle would be dismissed as a witness and CX 49 was to be withdrawn. For reasons for which I later explained (TR 1073-1079), I decided the stipulation did not go far enough in protecting the rights of the Complainants. In essence, I disregarded the stipulations of the parties and ordered the deposition of Polly Hickle post-trial. I also admitted CX 49 (TR 1292-1295).

³ I Ordered the removal of all personal communications by and between Bonnie Collins and Edward Wollensen from RX 9 (see TR 1153- 1156). After the removal of all personal messages, the exhibit was renumbered RX 9A (TR 1553-1156 & 1159).

⁴ Whether Bruce Hickle knew about Pleasure Company business being conducted by anyone on FPC property prior to May 10, 1991, will be specifically addressed below.

⁵ This information involved Wollensen carrying away quantities of material from the Training Center for reasons unknown (para 62). This event led to the Kelly/Pelham investigation (para 168).

⁶ Just so there is no mistake, the Pleasure Company was involved in sales of lingerie and sexual aids through catalog mail order. A party would be set up similar to a Tupperware party and someone would present the "adult" products and then take orders (para 13, PHD, p. 8).